

# **Arizona Department of Administration**

## **State Procurement Office**

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# **Arizona Procurement Manual**

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This document, published by the Arizona State Procurement office, is issued as a convenience to those persons involved with public procurement in this State.

The procurement guidelines contained within is intended to provide information and general direction to public procurement employees. It is not intended to replace or override the Arizona Procurement Code or procurement policies as provided in Technical Bulletins, or Standard Procedures.

Each person who may be involved with any action that requires a review of procurement statutes, rules or Technical Bulletins may benefit with the additional guidelines provided in this manual.

Approved for release this 30th day of August, 2017 by the State Procurement Administrator

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# 1 OVERVIEW

## 1.1 Introduction and Purpose

State of Arizona departments, boards and commissions must procure commodities, services and technology in accordance with A.R.S. § 41-2501 et. seq. and A.A.C. R2-7-101 et. seq., that constitutes the Arizona Procurement Code.

The Arizona Procurement Code is the legislative authority and guidance under which procurement activities in the State of Arizona are conducted. Based on the model procurement code of the American Bar Association, the Code was adopted by the State in 1985. The purpose of the legislation is to:

1. Simplify, clarify and modernize the laws governing State of Arizona procurement.
2. Permit the continued development of procurement policies and practices.
3. Make as consistent as possible the application of procurement laws among various state agencies.
4. Provide for increased public confidence in the procedures followed in public procurement.
5. Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state.
6. Provide increased economy of scale in state procurement activities and maximize value of public monies of this state to the fullest extent practicable.
7. Foster effective broad-based competition within the free enterprise system.
8. Provide safeguards for the maintenance of a procurement system of quality and integrity.

The procurement guidelines contained within are intended to provide information and general direction to public procurement employees. It is not intended to replace or override the Arizona Procurement Code, policies and procedures.

## 1.2 Authority

The Department of Administration director serves as the central procurement officer of this state. (A.R.S. § 41-2511) The director shall hire a state procurement administrator to administer the procurement of materials, services, and construction needed by the state; establish procurement policy and procedure; establish procurement-training standards; designate if an Arizona state contract is mandatory for all agencies to use; delegate procurement authority; and, monitor compliance. (A.A.C. R2-7-201)

Located in the Department of Administration, the main purchasing office in the State is the Arizona State Procurement Office (“SPO”). SPO serves as the central procurement authority for the State of Arizona. In doing so, SPO focuses on providing procurement leadership, procurement delegation, policy development, technical assistance and strategic sourcing opportunities.

The State Procurement Office (SPO) conducts strategic sourcing for statewide non-programmatic specific contracts including office supplies and equipment, temporary services, information technology equipment, and software and telecommunication equipment and services. SPO also conducts specialized procurements for a large number of small agencies with limited procurement authority. Additionally, SPO provides and supports a central eProcurement system for state agencies and cooperative members (e.g. counties, cities, schools) to use in conducting their procurements. This system assists SPO in providing the required compliance of procurement in the State of Arizona.

### **1.3 Procurement Delegations**

Under the authority granted by the director of the Department of Administration (A.R.S. § 41-2512), the Arizona State Procurement Administrator is given the authority to delegate procurement authority to state governmental units (A.A.C. R2-7-202). Delegation for an agency is issued to an agency staff member who assumes the role of agency chief procurement officer.

The State Procurement Administrator considers an individual's experience, procurement certification, public procurement training and knowledge of the agency staff, as well as the business needs of the agency, when setting the dollar limit of procurement authority to state agencies. State agencies may be granted other procurement decision-making activities identified in the Arizona Procurement Code and with permission from the State Procurement Administrator. The State Procurement Administrator issues a Certificate of Delegated Procurement Authority.

Once an agency receives procurement authority delegation, an agency employee serving as the agency chief procurement officer may further sub-delegate procurement authority to additional agency employees. Technical Bulletin No. 002 provides guidance to determine authority and responsibilities of sub-delegations within an agency. Specifically a sub-delegation is provided based upon the experience, certification, public procurement training and knowledge of the individual.

All agencies follow the procurement authority and activity limitations as stated in the Certificate of Delegated Procurement Authority. Agencies conduct procurements following the requirements of the Arizona Procurement Code and SPO policies and procedures.

### **1.4 Competition and Maintaining a Fair and Open Process**

The State's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide for checks and balances to regulate and oversee agency procurement activities; and
- Protect the interests of the State and its taxpayers.

Competition in the procurement process serves both State agencies and potential offerors by ensuring that the procurement process produces an optimal solution at a reasonable price and allowing qualified vendors an opportunity to obtain State business.



The primary responsibility for procurement rests with State agencies. In addition to complying with existing statutory and regulatory requirements, State agencies must conduct procurements in accordance with the following general principles:

- Make reasonable efforts to ensure that vendors are aware of opportunities to compete for State business;
- Define the process by which the procurement is being conducted;
- Disclose the general process to potential offerors;
- Adhere to the process while conducting the procurement; and
- Document the process, including information gathering and decisions made relating to the procurement.

In addition to existing statutory and regulatory requirements, the State Procurement Administrator has developed policies and procedures to support the general principles listed above.

## **1.5 Technical Bulletins**

Technical Bulletins serve as the procurement policies of the State of Arizona for agencies who are required to purchase goods, services, construction and technology under Title 41 Chapter 23. The State Procurement Administrator issues Technical Bulletins to establish uniform application, promote best practices and further define the Arizona Procurement Code. Technical Bulletins are subdivided into three areas: administration, information technology, and procurement.

As part of any procurement delegation or sub-delegation, procurement staff are required to adhere to Technical Bulletins in the same manner as the Arizona Procurement Code. Technical Bulletins are updated on a three-year cycle. New Technical Bulletins may be developed as needed to reflect changes in statutes or administrative code. Agency procurement staff may initiate new bulletins or modifications to existing bulletins for adoption by the State Procurement Administrator. The CPO council reviews all bulletins before submission to the State Procurement Administrator for review and approval.

Refer to the SPO website for current versions of Technical Bulletins.

## **1.6 Standard Procedures**

The State Procurement Administrator establishes Standard Procedures to prescribe methods to follow for the performance of particular aspects of public procurement in Arizona. All procurement staff delegated or sub-delegated procurement activities shall follow Standard Procedures to provide efficient, quality, consistent and transparent public procurement in the State of Arizona. Standard Procedures are updated on a three-year cycle. New Standard Procedures are developed as needed to establish regular, routine processes when there is ambiguity in the Arizona Procurement Code or Technical Bulletins.

Refer to the SPO website for current versions of Standard Procedures.

## **1.7 e-Procurement**

The State utilizes an electronic procurement system (e-Procurement) to conduct State business. This web-based application provides vendor registration, solicitation and contract management, requisitioning, receiving, and invoicing functionality. Working in conjunction with the State's financial system, it offers a complete source-to-payment solution. All procurement activity is to be conducted in this system.

Alerts are sent to notify system users of updates, issues and news items. The State Procurement Office provides support for this system through their Help Desk. All questions regarding the functionality of the system should be addressed to these resources.

## 2 PROCUREMENT BASICS

### 2.1 Overview of Procurement Tools

State agencies purchase commodities, services, and technology to address needs or solve problems in the performance of agency mission. Needs and problems vary with respect to how well they can be defined. Some are highly standardized and are common among most, if not all, agencies. Others are unique to a given agency and range from simple, routine concerns to complicated problems requiring complex solutions.

To address this array of conditions, a variety of procurement tools and techniques are available. The most common are statewide mandatory contracts, set-aside vendor products, agency or multi-agency established contracts resulting from competitive bids conducted by State agencies, sole source contracts, single source contracts, piggyback contracts, emergency contracts, and competition impracticable contracts. These and other procurement tools are discussed in detail later in this chapter.

### 2.2 Choosing a Procurement Vehicle and the Order of Purchasing Priority

State agencies undertake procurements to address a wide range of needs. To meet the varying needs and their form, function and utility requirements, agencies must first identify their specific needs and relevant State requirements and goals and then complete the following order or precedence when choosing the proper procurement vehicle:

*First:* Statewide mandatory contracts;

*Second:* Agency-specific or multi-agency established contracts;

*Third:* Set-aside vendors; and

*Fourth:* An “open market” procurement that can either be discretionary or result from an informal or formal, competitive bidding process based on the total value of the procurement.

### 2.3 Contracts

Contracts are written agreements between a buyer (the State) and a seller (the vendor). These documents specify various terms and conditions to which both parties must adhere. Some examples of these terms and condition include price, delivery terms, description of the commodity or service being procured, payment terms, duration of the contract and, liability clauses and any other requirement of either the buyer or seller.

Contracts may be issued by the State Procurement Office on behalf of all agencies or may be issued by one or more agencies for their unique needs. The following provides a general description of various types of contracts used by State agencies:

### 2.3.1 Statewide mandatory contracts

The State Procurement Office creates centralized contracts for commodities and services. There are more than 1,000 such contracts in place. Once these contracts are established, agencies may purchase from them. For the purchase of commodities or services available from a statewide contract, the agency may issue a contract release directly to the contractor without prior approval by the state procurement office or agency procurement staff.

Agency procurement delegation requires that agencies use a statewide mandatory contract to purchase commodities that meet the agency's requirements with respect to form, function and utility. Agencies that are exempt from the Arizona Procurement Code are encouraged to use statewide mandatory contracts that meet the agency's requirements with respect to form, function and utility.

Agencies may request an off-contract purchase by completing SPO Form 104, and following the instructions in Standard Procedure SP040.

### 2.3.2 Qualifications contracts

The State Procurement Office establishes qualifications contracts that prequalify vendors for provision of services. These contracts establish standard terms and conditions, set maximum not-to-exceed prices, and satisfy many legal requirements associated with State procurements, such as advertising, vendor responsibility determination, and other qualifications.

Utilization of qualifications contracts may require additional competitive procurement processes at the agency level and as applicable prior to the purchase of services. An authorized agency user may conduct a formal mini-bid process by developing a project definition that outlines its specific requirements and solicits bids from qualified contractors to determine the best value solution. The best value may also be the lowest price. The exact processes to be followed are set forth either in the contract or the guidelines associated with that contract.

An authorized agency user and contractor cannot amend the terms and conditions of the qualifications contract, but may agree, through the mini-bid process, to pricing or terms more favorable to the State (e.g. delivery terms, longer warranty period, no-cost maintenance). Under no circumstances can the authorized user and the contractor trade off terms for pricing. For example, the authorized agency user cannot agree to a waiver of indemnity or agree to indemnify the contractor in return for better pricing.

### 2.3.3 Agency-specific or multi-agency contracts

These contracts are established by an agency or multiple agencies (with prior approval) to procure on an ongoing basis. They contain the specific terms and conditions binding both the vendor and the State. These contracts are usually in effect for multiple years. More guidance on establishing a contract is provided in Chapters ##, ## and ##. Examples of agency-specific multi-agency contracts include:

- **Competitive Bid Contract** – A contract awarded pursuant to an IFB, RFP, or RFQ. Additional guidance is provided in Chapters ## and ##.

- **Sole Source Contract** – A sole source procurement is one in which only one vendor can supply the commodities or services required by an agency. The agency must document why the proposed vendor is the only viable source for the commodities and/or services needed by the agency. State Procurement Administrator approval must be obtained for a sole source contract if the value of the contract exceeds the agency’s procurement delegation. Refer to the Arizona Procurement Code (A.R.S. § 41-2536 and A.A.C. R2-7-E301), and Technical Bulletin TB 041 for more information.
- **Emergency Contract** – An emergency procurement is one in which an urgent and unexpected situation occurs where health and public safety or the conservation of public resources is at risk. Where an emergency exists, an agency may issue procurement contracts without complying with formal competitive bidding requirements. However, an agency should make a reasonable attempt to obtain at least three oral quotes. An agency’s failure to properly plan—which then results in a situation where normal practices cannot be followed—does not constitute an emergency. State Procurement Administrator approval must be obtained for an emergency contract if the contract’s value is over the agency’s procurement delegation.
- **Competition Impracticable Contract** – A competition impracticable procurement is one in which, although there are two or more potential offerors, the agency has determined that it is in the best interest of the State to procure from a particular vendor. (A typical example would be when an agency needs maintenance for a particular piece of equipment, and that maintenance must be provided by a particular vendor to maintain the warranty.) State Procurement Administrator approval must be obtained for a competition impracticable contract if the value of the contract exceeds the agency’s procurement delegation. Refer to the Arizona Procurement Code (A.R.S. § 41-2537 and A.A.C. R2-7-E303) and Technical Bulletin TB 041 for more information.
- **Piggyback Contract** – At times, an agency may find it more efficient to establish a contract based on another governmental entity’s contract. This is known as “piggybacking” and may be used in accordance with the criteria established in the Arizona Procurement Code, A.A.C. R2-7-1003 and Technical Bulletin TB 005. The agency must create a single-agency contract and obtain all approvals necessary for the specified contract value.

## 2.4 Informal Purchases

Informal purchases are procurements made below the statutorily established monetary levels and at the discretion of the agency, without the need for a formal competitive procurement process. Use of informal purchasing streamlines the procurement process. Informal purchasing also improves opportunities for small businesses to secure business with the State.

When contemplating an informal purchase, the agency must first determine that the commodity or service cannot be acquired through a statewide mandatory contract.

## 2.5 Procurement Card Program

The State’s Procurement Card (P-Card) Program is a procurement and payment method designed to expedite purchases and payments. When properly used, the P-Card is an efficient and cost-effective alternative to a variety of traditional labor-intensive procurement and payment tools. Some purchase and payments that can be made with a P-Card include:

- Commodities or services from contracted sources;

- Commodities or services from set-aside vendors; and
- Supplies and materials.

Employees must be authorized by their agency to have a P-Card. The maximum single transaction limit for a P-Card holder cannot exceed the agency's procurement delegation. Agencies may set lower limits for specific employees and can impose additional limits in order to control P-Card activity.

Additional information on the P-Card program is found in the State of Arizona Accounting Manual (SAAM) at the General Accounting Office website. Refer to Topic 45 (Expenditures, Expenses, and Disbursements), Sections 35 through 37.

P-Card holders should also review their agency's policies and procedures pertaining to P-Card use. Ultimately, the P-Card holder is responsible for the proper use and safekeeping of a P-Card.

## **2.6 Purchase Orders**

A purchase order is a basic contractual document committing the State to pay, issued by an agency's procurement office, finance office, or other authorized individual(s), and is general for "one time" purchases. A purchase order usually consists of the vendor's name/address, a description of the item, quantity, cost per item, shipping terms, total cost and some data for State use (cost center, object code, etc.) Purchase orders are used to procure from open market quotations. Purchase order terms and conditions, found on the SPO website, must be incorporated in the agency's purchase orders.

## **2.7 Contract Releases**

A contract release is issued by a State agency based on an awarded statewide or single-agency contract and is similar in both form and function of a purchase order, in that once a statewide or single-agency contract is approved and available for use, agencies can issue releases (purchases) against the contracts without further approval from a procurement officer.

## 3 GENERAL GUIDANCE FOR SOLICITATIONS

### 3.1 Introduction

This chapter is intended to provide guidance to agencies on the following key considerations that apply to most solicitations:

- Procurement ethics;
- Mandatory requirements that must be considered and included in procurement;
- Methods for gathering information before developing the solicitation document and specifications;
- Advertisement of procurement opportunities;
- Determination of vendor responsibility; and
- Contract administration and monitoring.

Building on this base, other chapters will provide further detailed guidance to agencies on conducting procurements using two of the most common types of solicitations: Invitations for Bids (IFB) and Request for Proposals (RFP).

### 3.2 Procurement Ethics

Ethical procurement best practice starts with procurement professionals following an ethical code, which dictates their behavior and actions while conducting business. Ethical procurement practices should be extended to all stakeholders in the procurement cycle. The moral, ethical, legal and professional standards provided for in the Department of Administration's code of conduct shall be the minimum values exhibited by Arizona Government employees engaged in procurement activities.

All State Government employees shall promote the highest standards of personal ethics, competence and professional conduct. Procurement professionals are encouraged to ask questions and raise concerns to their immediate supervisor when appropriate. If for any reason this is not a viable option, questions and concerns should be addressed with agency upper management. If necessary, employees are encouraged to share their questions or concerns to the SPO Compliance Officer, or through the SPO Anonymous/Confidential Compliance Hotline located at <http://spo.az.gov>. Technical Bulletin TB001 provides additional information and restrictions.

### 3.3 Mandatory Requirements

State procurements, whether using an Invitation for Bids, Request for Proposals, or other method, must comply with a number of different statutes, regulations, and policy requirements. Principal among these are:

- Procurement lobbying law (significant procurement role);
- Sales tax certification;
- Vendor responsiveness and responsibility;

- ASET approval (PIJ process), as applicable;
- Prevailing wage schedules, as applicable;

In addition, there are standard clauses that must be included in every State contract. The body of clauses is commonly referred to as “Uniform Terms and Conditions” and can be found in the Resources section on the SPO website. A subset of these are required by state law and are known as Statutory Terms and Conditions.

It should be noted that, depending on the nature of the procurement, additional requirements might apply. Check with your agency counsel or contracts management office.

### 3.4 State Reserved Rights

In addition to mandatory requirements, there are a number of State-reserved rights that are typically included to provide additional protections to the agency conducting the procurement. These should be clearly stated in the solicitation. The following is the most common set:

The [name of agency] reserves the right to:

- Reject any or all proposals received in response to the IFB/RFP;
- Withdraw the IFB/RFP at any time, at the agency’s sole discretion;
- Make an award under the IFB/RFP in whole or in part;\*
- Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the IFB/RFP;
- Seek clarifications and revisions of proposals;\*
- Use proposal information obtained through site visits, management interviews and the State’s investigation of a bidder’s qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the IFB/RFP;
- Prior to the bid opening, amend the IFB/RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent IFB/RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- Waive any requirements that are not material;
- Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- Utilize any and all ideas submitted in the proposals received;
- Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of days from the bid opening; and,\*
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full



and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements of the solicitation.\*

**\*NOTE:** Failure to include these specific reserved rights (marked with an asterisk) in the solicitation precludes their use in that procurement.

Depending on the nature of the procurement, there may be additional State reserved rights beyond those presented here.

## 3.5 Gathering and Exchanging Information Prior to Solicitation

Procurement staff has several methods available to them for gathering and exchanging information with potential bidders, prior to issuing a solicitation or making a purchase. These methods enable information gathering while promoting openness, fairness, and transparency. The most common information-gathering options are described below.

As best practices when gathering information, it is suggested that an agency issue a notice the potential offerors on the State's prospective suppliers list in the State's eProcurement system, to ensure a level playing field among potential bidders is provided. Other means of identifying potential bidders, such as market-based research and newspaper/trade journal advertisements, may be used depending upon the nature of the agency's need.

### 3.5.1 Request for Information

A Request for Information (RFI) is a research and information-gathering document used when an agency seeks to learn about the options available for addressing a particular need or wants to obtain information to help create viable requirements for a potential solicitation. A contract cannot be awarded from an RFI.

An example of a need for an RFI may be when an agency needs to buy decals to affix to the exterior of a vehicle, but does not know how various materials (such as stock or ink) withstand long-term exposure to the elements. Issuing an RFI to potential bidders would elicit responses that would enable the agency to write specifications to provide the agency with the best solution.

### 3.5.2 Focus Group/Roundtable Session

A focus group/roundtable session generally is an open meeting among all potential bidders and the agency(ies) involved in the procurement before the release of a competitive solicitation. These meetings allow potential vendors and agency staff to ask questions of each other and allow for an open exchange of information. It is suggested that these meetings be moderated to ensure that all attendees are provided an equal opportunity to participate. Techniques that can be used include: Agendas detailing the topics to be discussed; prior submission of question; and restricting time allowed for responses.

**NOTE:** Requests for Information and Focus Group/Roundtable Sessions *generally* do not commence the restricted period under procurement lobbying law/significant procurement role, because the documents do not request a proposal to result in a procurement contract. (A.R.S. § 41-741(14)(b))

### 3.6 Procurement Lobbying Law/Significant Procurement Role

Arizona Revised Statutes §§ 38-503 through 38-505, 41-741, 41-753, 41-2503, and 41-2517 imposes certain restrictions on communications between an agency and an offeror/bidder during the procurement process. An offeror/bidder is restricted from making contacts from the date of the earliest notice of intent to solicit offers/bids through the date of the final award, and, one year after award with the successful contractors. The interval between these points is known as the “restricted period.” Certain exceptions to this restriction are set forth in the Arizona Procurement Code.

### 3.7 Advertising Procurement Opportunities

An agency has a statutory obligation to advertise a procurement opportunity when the procurement exceeds the informal procurement limit. (A.R.S. § 41-2533) The intent of advertising is to promote competition. Advertisements should provide prospective bidders with an overview of the proposed procurement, including a brief description of the commodities or services sought, the contract period, the proposal due date, and contact information. In addition, as best practice, an agency should also advertise its procurement opportunities in other sources such as trade publications, journals, newspapers, and agency websites and mailing lists.

Agencies shall also give public notice to all offerors/bidders registered on the prospective bidders list in the e-Procurement system.

### 3.8 Determination of Vendor Responsibility

A.R.S. § 41-2540 and subsequent rules require that a State agency make a determination that a bidder is responsible prior to awarding the bidder a State contract. It is further recommended that the contract expressly obligate the contractor to maintain its responsibility throughout the term of the agreement. The responsibility determination is based upon many factors, including, but not limited to, the bidder’s:

- Financial and organizational capacity;
- Legal authority to do business in this state;
- Integrity of the owners/officers/principals/members and contract managers; and
- Past performance of the bidder on prior government contracts.

Whether a bidder is “responsible” is a question of fact to be determined on a case-by-case basis after a comprehensive weighing of all factors. An unfavorable rating in one or more areas of evaluation does not need to result in a non-responsibility determination; however, it does require the agency to make a determination that it has reasonable assurance that the proposed contractor is indeed responsible or non-responsible, as applicable.

Before finding a bidder non-responsive, a State agency must ensure that the bidder was afforded due process rights and provided with the opportunity to explain its position in writing and, in some instances, in person, at a responsibility meeting. If responsibility issues cannot be resolved or explained to the satisfaction of the agency, the agency may issue a finding of non-responsibility to the bidder. This finding must be provided in writing.

### 3.9 Bidder Debriefings

The solicitation should include information advising bidders that a debriefing may be requested by any unsuccessful offeror, within a reasonable timeframe after the contract award. Debriefings are viewed as a learning process for offerors who may gain a better understanding regarding perceived deficiencies contained within their submitted proposal.

While a debriefing is typically conducted in person, it may be conducted by video conference, over the phone or through written summaries, if agreed to by the bidder. During the debriefing, the State agency may do one or more of the following:

- Limit the discussion to the reasons why the bid was not successful;
- Discuss the reasons why the winning bid was selected; and
- Offer advice and guidance to the bidder to improve future bids.

### 3.10 Contract Administration and Monitoring

The approved contract must be administered and monitored properly. Regular, diligent oversight of all activities and actions regarding the contract is an important part of the overall life cycle of a contract. The agency should assign a contract manager (if it is not the procurement officer), who will be responsible for ensuring that the contractor performs the requirements of the contract in accordance with the contract's terms, conditions and specifications. Proper oversight and administration of the contract may entail educating and communicating with agency personnel who will be direct users of the goods, services or technology acquired, and who will therefore be in the best position to participate in monitoring the vendor's performance of contract provisions. Regular performance monitoring is a powerful tool for ensuring that required performance specifications and/or standards are being met and maintained.

### 3.11 Prior Approvals

Certain purchases require review and approval from designated agencies before completing the purchase. The need for prior approval may be triggered by the type of equipment or service, amount of purchase, or deviation from normal procedures.

A pre-approval is required prior to any purchase of:

- Information technology (IT) solutions;
- Data processing equipment and services; and
- Software
- Audit services
- Legal services

Agencies are required to submit to ADOA-ASET requests, providing justification, for purchases of information technology when the total cost exceeds \$25,000. If the request is approved, an approval number will be assigned and entered into the requisition in the e-Procurement system. Agencies will receive written notification from ADOA-ASET of this pre-approval and any necessary information required to prepare a purchase order. Agencies attach approval requests and supporting documentation to their requisition.

Purchases of \$25,000 or more must use one of the following methods to procure:

- Purchase from a statewide mandatory or agency-only term contract
- Use competitive bid or competitive proposal process

## **4 SPECIFICATIONS/SCOPES OF WORK**

### **4.1 Introduction**

Specifications are one of the most important elements of the purchasing process. The preparation of good specifications is probably the most difficult function in the process. Inadequate or poorly written specifications are the cause of many bidder challenges and can considerably delay the purchasing process. This information is designed to define functional requirements and assist agencies by providing guidelines to good specification writing.

The agency procurement office has final responsibility for specifications issued as part of formal Invitation for Bids and Request for Proposals. The specification may originate with an agency program or division, an outside consultant, another governmental entity, or a professional society or association, however, the agency procurement office will review the specifications for suitability and competitiveness. Some agencies have the view that they are authorized to spend to the limits of their budgets and should be able to buy whatever product or service they prefer. However, the agency procurement office is to conserve public funds and to refrain from buying a more costly product or service or larger quantity than is actually needed. The agency procurement office is obligated to try to obtain both product and price competition.

### **4.2 Definition of Specification**

The term “specification” refers to a description of the characteristics of a commodity or service required or desired. Specifically, it is defined as the explicit requirements furnished with a solicitation upon which a purchase order or contract is to be based.

Specifications set forth the characteristics of the property and services to be purchased so as to enable the vendor to determine and understand that which is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics, a reference brand name or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications may be incorporated by reference and/or through attachment to the solicitation.

### **4.3 Why Use Specifications**

Specifications are written not to restrict bidding but encourage open competition. The goal is to invite maximum reasonable competition. The degree to which specifications are open and unrestrictive directly affects the type and extent of the competition desired.

Specifications provide for quality control, that is, they assure that the quality of an item is suited to its intended use and eliminates unnecessary features or frills.

Specifications are public records; they serve to keep the purchasing open by allowing the public to see exactly what is being purchased. Specifications are used during the evaluation of bids to determine whether or not bids are responsive.

Some of the difficulty in preparing specification stems from the fact that the State can seldom dictate the exact characteristics of the products it wants. The requirements of an agency are usually not sufficient to justify a special or name brand product. Consequently, specifications are developed around a manufacturer's product specifications. The immense variety of items purchased by the State further complicates specification writing. Products are improved, new products are introduced, and the needs of the public change. Consequently, the function of preparing and updating specifications must be an ongoing one.

## 4.4 Specification Sources

There are many available sources that can be of assistance to you when you are developing your specifications. Here are suggestions for gathering specification information:

- Collect as much information as possible from the end user as to the function and performance of the requested product. Use their expertise and knowledge.
- Collect product information from the industry (brochures, catalogs, specs, etc.). Many manufacturers list their catalogs and product specifications on the Internet.
- Look for standards and test information from professional societies where available.
- Look for specification information from other government entities. Check to see if standard specifications already exist. Use the Internet and email for research. Many states have standard specifications listed on the Internet.
- Call on other "experts" in the purchasing community for help.
- The National Institute of Governmental Purchasing (NIGP) maintains a library of over 10,000 specifications developed by federal, state, and local government purchasing entities in the U.S., and federal, provincial, and local entities in Canada.

## 4.5 Types of Specifications

There are several different types of specifications to address the item being purchased in a number of ways. The great variety of goods and services bought by the State necessitates the use of all the following types of specifications:

### 4.5.1 Standard

Where items that have similar usage are needed frequently or repetitively, standard specifications are developed. This establishes performance and quality levels, reduces the variety of things bought, simplifies inventories, allows for large volume contracts to be developed, and eliminates duplicative specification writing. Most statewide contracts use standard specifications to describe products required.

The standard specification details the characteristics that the item must possess without naming a brand or model.

#### **4.5.2 Non-Standard**

Most purchases use non-standard or have no standard specification developed for the item or service required, are agency-specific and used as either a one-time basis or term. A non-standard specification can be anything from a simple brand-name-or-equivalent description to a statement of work for professional services. Preparing them constitutes a large portion of purchasing's daily work.

#### **4.5.3 Brand Name**

Brand name specifications cite a brand name, model number, or some other designation that identifies a specific product of a manufacturer. Brand name specifications are not considered good specifications, but they do have a legitimate use in public purchasing. An example might be when a particular brand name item must be purchased in order to be compatible with existing equipment.

The most restrictive type of specification, they have the effect of limiting bidding to a single product and are only used when only one product will meet the intended need. Further, use of brand name specifications require approval from the state procurement administrator. (A.A.C. R2-7-403)

#### **4.5.4 Brand Name "or Equivalent"**

In the absence of standard specifications, the State often uses manufacturer's brand or model designations as a standard. Brand names are used to indicate general performance and quality levels. Unless otherwise noted, it is understood that other brands or models will be accepted on an "as equivalent" basis.

To aid in communicating the desired quality level to bidders, an effort should be made to use brand name designations that are known throughout the industry or have specifications that are readily available. If a bidder does not know which of his products is comparable to the designated brand names, he cannot bid intelligently and may not bid at all. Bidders customarily know their competition and can usually tell without too much difficulty which of their brands or models will be considered equal. Still, the bidder cannot be sure which features of the item will be considered crucial in making the award. In addition to the brand name, the specifications should name the minimum salient characteristics to be used in comparing brands and making the award.

It is the responsibility of the bidder to furnish with the original bid or proposal submission sufficient data for the State to determine if the goods or services offered conform to the bid specifications. The agency reserves the right to determine equivalency.

#### **4.5.5 Detailed Design-type or Custom-made**

Design specifications set the requirements for the item to be purchased by detailing the characteristics that the item must possess. These specifications are used to determine how a product is to be fabricated or constructed and is primarily used where a structure or product has

to be specially made to meet a unique requirement. Design specifications have precise characteristics that can limit competition and generally do not accommodate rapidly changing technology. Their use is limited.

#### **4.5.6 Functional or Performance-type**

The use of performance type specifications has steadily increased. This type of specification states the function that a user to achieve and can obtain both elements of design and performance. The emphasis is on what the product does, how well it performs, and at what cost for its intended use. This encourages ingenuity, innovation, and cost reduction.

Writing performance specifications and evaluating bids requires a different approach and point of view than the more traditional one. Instead of establishing common denominators by looking for equivalencies, one must look for differences that provide equivalent or better performance and lower costs.

#### **4.5.7 Qualified Product List or Approved Brands**

A Qualified Products List (QPL) specification is one based on certain tests or other criteria for comparing or examining and approving products before seeking competitive bids. It specifies acceptable products by brand name, model number, or whatever designation is necessary to precisely identify a certain product. Continued documentation of acceptable products is necessary as products tend to change or be modified and may or may not continue to be acceptable.

The purpose of this type of specification is to determine, in advance, products that are acceptable. The evaluation of these bids is greatly simplified, the price becomes the main factor for award. One of the main reasons for using a QPL is to avoid the problems that occur where a low bidder offers a product, and the products conformance to specifications is unknown and difficult to ascertain. One disadvantage of QPLs is that they can limit competition, and over time, the list can become outdated as the quality of products improve or new, better products are developed.

Producing a qualified product list involves developing original specifications and field-testing similar products for acceptability and can take a considerable amount of time and expertise. But, in the long run, it can reduce the amount of time testing products because several products can be tested simultaneously. Once a product is accepted for the list, it does not require further testing unless specifications change. Manufacturers must agree to inform purchasing of any significant changes to their product for reevaluation and continued acceptance on the qualified product list. (A.R.S. § 41-2541)

#### **4.5.8 Samples and Technical Data**

This type of specification requires that bidders offer their price and a sample of their product and technical data meeting general descriptions. In some instances, the comparison and testing of samples can effectively substitute for a detailed specification.



Samples are tested and evaluated on a price/performance, cost-effective basis. Examples of products for which this approach is useful are floor waxes, paints, disinfectants, cleaning agents, and art materials.

#### **4.5.9 Alternative and Optional Items**

Alternate specifications are sometimes need in the public interest to consider comparisons of costs or to keep award within the funds available. They can be used to foster increased competition, leverage available funding, and other advantages.

Optional items are features that may be adapted to a piece of basic equipment and may enhance performance, may be needed under certain circumstances, or may be luxury items. Careful consideration should be given as to whether optional items will be purchased or not and if the cost of such optional items should be included in the award consideration.

### **4.6 How to Develop Specifications**

The function of specifications is to provide a basis for obtaining a commodity or service that will satisfy a particular need at an economical cost. A good specification should do these things:

- Identify minimum requirements
- Allow for a competitive bid environment
- List reproducible test methods to be used in testing for compliance with specifications
- Provide for an equitable award at the lowest possible cost

Specifications by their nature, set limits and thereby eliminate or restrict items that are outside the boundaries drawn. Specifications should be written to encourage, not discourage, competition consistent with seeking overall economy for the purpose intended. Consideration should be given to suitability and to overall cost effectiveness in addition to acceptability and initial price.

To provide a common basis for bidding, specifications should set out the essential characteristics of the item being purchased, so that all bidders know exactly what is wanted. If an essential requirement is left out of the specification, an award may be made for a product that does not meet the needs of the end user. The suitability of the product may not become apparent until much later. Situations such as these are seldom resolved to anyone's satisfaction and can be a waste of taxpayer's money. If such an omission is discovered in time, the bid should be canceled, specifications corrected, and new bid solicited.

Avoid over specifying or underspecifying. Items should be able to perform as necessary without unessential frills. Requiring unnecessary features can result in specification so restrictive that they can defeat competition and increase the cost of the item. Remember that all purchasing activities are subject to public and vendor scrutiny.

If a specification allows both an equal opportunity to bid and objectivity of selection by the bidder, then the specification is serving its intent. A straightforward and fair evaluation based on good specifications will persuade vendors to bid.

## 4.7 Elements of a Complete Specification

The following information is presented as a basic outline for specifications. Sections may be added or deleted as required by the product specification being developed.

### 4.7.1 Scope, Classification, or Description

The first words or lines of a specification should be a general description, classification or scope of the product desired and the intended or desired use of the item.

### 4.7.2 List of Requirements

These requirements should identify measurable physical, functional, and quality characteristics that meet the requirements. This may include a detailed list of characteristics, such as size, physical dimensions, weights, percent and type of ingredients, types and grades of materials, standard of workmanship, or basic design.

The text should be clear, simple language, free of vague terms or those subject to variation in interpretation. The use of abbreviations should be restricted to those in common usage and not subject to possible misunderstanding.

#### Measurements

All terms relating to measurements (gauge, capacity, volume, etc.) should be used in accordance with established precedent and trade practice. Review the document and make every effort to replace words with numbers or use words and numbers in combination. Whenever you use numbers instead of words, communication is truly enhanced. All measuring and testing equipment is designed to provide specific numerical answers.

#### Figures and Tables

Figures, illustrations, graphs, etc. can often describe the item more clearly and accurately than text. They should be used as much as possible.

#### Group Terms

Group terms are designations with established precedent and trade practice, such as type, grade, class, and competition. These terms are defined as follows:

- Type: Implies design, model, shape, etc. of commodities
- Grade: Implies quality of a commodity
- Class: Implies mechanical or other characteristics that are not in quality of grade
- Composition: Implies chemical differences in commodities
- Other: Other terms such as style, color, form, weight, size, etc. are also used a group terms

#### Shall, May Should, or Will?

Use “shall” to express a requirement binding on the contractor or the end user

Use “may” or “should” to express non-mandatory or permissive provisions

Use “will” to express future requirements or when certain conditions are met

### **4.7.3 Definition of Terms**

The necessity for definition of terms can usually be avoided with good specifications. However, in those cases where proper interpretation is necessary or agreement as to definition of terms is a key part of the specifications, such definitions should be included.

### **4.7.4 References to other Specifications or Publications**

References to other specifications or publications should be limited to the federal government, commercial organizations, technical societies, etc. that are widely recognized and accepted by the industry. Examples of recognized organizations are the American Society of Testing and Materials (ASTM) Standards and the American Society of Mechanical Engineers (ASME).

### **4.7.5 Sampling, Inspections, and Test Procedures**

When samples are required, it should be clearly identified as a requirement in the specifications. All samples and test results should be retained for delivery compliance of products ordered.

When possible, a test inspection plan should be developed and included in the specification.

### **4.7.6 Packaging and Delivery Information**

Where specifications differ from standard commercial-sized packages, this should be clearly defined. Custom packaging may increase the cost of the product.

Special or unusual delivery dates or delivery points should be listed. Many times, items need to be shipped to a variety of locations within the state. A complete list of delivery addresses should be included in the specifications so that a bidder may take into account delivery costs and submit an accurate bid.

## **4.8 Checking Your Specifications**

To assure that your specifications meet the above criteria, use the following checklist:

- Specifications should be clear and accurate, yet simple. They should NOT be so specific that a loophole eliminates competition and allows a bidder to take advantage of the agency.
- Specifications should be understandable to both the bidder and the agency.

- Specifications should be as flexible as possible. Inflexible specifications defeat the competitive bid process.
- Specifications should be legible and concise.
- Specifications should be capable of being checked. Specifications that are written in such a way that a product or service offered cannot be checked as meeting specifications is of little value and results in confusion.
- Specifications should be reasonable in its tolerances. Unnecessary precision is expensive.
- Specifications should be as fair to the bidder as possible and allow for competitive bidding by several bidders.

## 4.9 Brand Name Type Specifications

Since use of a brand name specification is restrictive, such a specification may only be used when the state procurement administrator makes a written determination. The written statement must state specific reasons for use of the brand name specification.

Once a determination is made, the agency shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the purchase shall be made as either a 'not practical to quote' or a 'sole source', depending on the amount of the purchase.

## 4.10 Writing a Scope of Work

Much of the information provided regarding the writing of a specification can be translated into writing a scope of work. The following are subtle differences to consider in writing a scope of work.

The scope of work (SOW) is the area in an agreement where the work to be performed is described. The SOW should contain any milestones, reports, deliverables, and end products that are expected to be provided by the performing party. The SOW should also contain a timeline for all deliverables.

The problem with most scopes of work is a lack of specificity, namely, when the two parties disagree on what should have been delivered and a review of the SOW does not support one interpretation over the other. This problem is common in research agreements and is often where disputes arise. The best way to avoid this problem is to avoid any and all ambiguity.

A scope of work should include the following components:

- Purpose
- Glossary (optional)
- Duties and Responsibilities
- Timeframe
- Tasks
- Administration
- Deliverables

#### 4.10.1 Purpose

The purpose may optionally appear in an invitation for bids solicitation, but it is required for Request for Proposal-based solicitations. It consists of a highly tailored series of carefully worded statements that answer the following questions:

- What is to be done?
- What are the deliverables?
- Who is going to do it?
- When is it going to be done?
- How will it be done?
- How can you tell when it is done?
- How much will it cost?

#### 4.10.2 Glossary, optional

In the glossary, spell out each acronym used in the SOW. Also include definitions of odd or unusual terms. Think about the document from the perspective of someone who does not work in the particular industry or discipline.

#### 4.10.3 Duties and Responsibilities

The purpose of this contract paragraph is to define the duties and responsibilities of both the agency awarding the contract and the contractor. Since the detailed contract scope is built around the availability of in-house resources, it follows that the in-house resources must be defined as part of the scope of work. These resources should be clearly defined in the duties and responsibilities section of the contract along with incidental support (e.g. telephone, computer equipment, copy equipment, office space, etc.)

Do not forget to include and clearly define the responsibility and authority of the agency employees that are charged with the administration of the contract or management of the project or both. For large and complex contracts it is not uncommon to divide the duties between several individuals—project, contract and acceptance.

#### 4.10.4 Timeframe

Some contracts are unsuccessful not because the contractors fail to meet their objectives, but because they fail to do so in a timely manner, or within the agreed upon deadlines. Time schedules in any contract are as important as deliverables or payments.

Always clearly specify contract submission requirements. The number of calendar or work days from the date of contract execution, contract effective date is often used. This technique prevents errors and misunderstandings. For example, “Contractor agrees to deliver the Final Project Plan to the project manager for approval within ten calendar days from contract execution.” Of course,

what constitutes an acceptable final project plan is defined in the definition section of the contract. After acceptance of the project plan, the contractor is bound to the tasks and timeframes documented in its plan. This technique is by far the best way to handle this often difficult contract administration necessity.

Examples of timeframes are:

- Within 30 calendar days after contract execution
- Within five working days after the end of every month
- Ten days after receipt of agency recommendations
- Specific date
- Completed within one year from receipt of authorization

#### 4.10.5 Tasks

Tasks are the activities and milestones that need to be completed to accomplish the contract objectives. Tasks are the narrative of the spectrum of services to be rendered or work to be performed. Tasks can be structured by milestones, deliverables, or process. Clear definition of the tasks is a must in order to reduce scope creep. Following are some specific guidelines and examples:

- Define the range of contractor activities, beginning the following tasks with the phrase “All work required to”.
  - Design, sample, and test
  - Develop, manufacture, and field test
  - Test and evaluate
  - Collect and analyze
- Define all detailed requirements in the delivered product or service.
- Categorize requirements (reporting, documentation, survey, design, etc.).
  - The survey shall include a minimum of 10,000 households.
  - Analysis shall be made to determine the statistical relationship between\_\_\_\_\_.
  - The equipment shall operate in the temperature range of -20 to +60 degrees centigrade.
  - Use an appropriate industry recognized formatting system if one is available.
  - Define the major tasks in such a way that the sequence allows for progress measurement and easily measured task costs.

#### 4.10.6 Administration

If there are meetings, calls, conferences, or other “soft” deliverables, they should be outlined in the administration portion of the SOW. Any requirement that is not an end product of a specific task, but is required of the performing party, needs to be described in the administration section of the SOW.

Poor example: *PI will be required to give weekly reports of progress during the soy bean season with more frequent reports during the height of the season.*

The problem with the above example is that it does not specify what needs to be in the reports, what “more frequently” means, and when the “height of the season” is.

Good example: *PI will be required to give weekly reports consisting of wind pattern analysis, fungi spore distribution, and potential risk areas. During the height of the season, May 15–July 15, the PI may be required to give twice-weekly reports.*

#### 4.10.7 Deliverables

Deliverables are the “outputs” or the “end products” of the contract and are evidence of a contractor’s performance in meeting the contract requirements. Most deliverables take the form of a tangible product (hardware, software, data, written report, completed installation, etc.), but some can also be less tangible (meeting facilitator or custodial services).

Deliverables should always be defined in the contract or in a separate mutually agreed document incorporated by reference in the contract. Since the definition of a deliverable is the primary yardstick for contractor performance, all other contractual protections rely upon this definition.

Deliverables should be:

- Specific
- Have clear instructions regarding their submission
- Clearly define the manner and standards by which the agency will determine whether they are acceptable

#### 4.10.8 Example of Tasks/Deliverables Objectives

Poor example:

Task: Assess class needs for public health awareness.

Deliverable: Write curriculum to address needs.

The problem with the above example is that nothing is specified. The task should have measureable requirements in it and the deliverable must be quantifiable.

Good example:

Task: Survey four classes of 20 students in asthma awareness. Each class will answer a 25-question survey that assesses their general knowledge of asthma issues as they relate to public health. One reviewer should take about an hour with each class to take the survey and another two hours per class to assess the data.

Deliverable: A 10-hour curriculum for graduate student classes of up to 20 students that addresses issues of deficiencies in public health awareness in asthma prevention and care.

By reading the task and deliverables, the administrative personnel should be able to construct the budget associated with the SOW. More importantly, in reviewing the deliverables, there should be no question about what is expected of the performing party. A SOW may contain many deliverables, but each should be broken down into tasks and end products to specify what is expected.

#### 4.10.9 Writing Tips

The following writing tips should help you produce high-quality documents that are clear and unambiguous:

- Choose one term to define the contractor's obligations and use it consistently thereafter (e.g., "Contractor agrees...").
- Use short sentence length.
- Use active voice, task oriented statements.
- Limit the length of a statement to three sentences or less.
- Avoid abbreviations, acronyms and words that have special meaning as much as possible, or define them in the definitions section of the contract, and then be consistent thereafter.
- Avoid using "any", "either", "and/or" and "never".



## **5 INVITATION FOR BIDS**

### **5.1 Introduction**

An Invitation for Bids (IFB) is the appropriate solicitation to be used when the method of award is to be based on lowest price only. An IFB describes the administrative process; defines specifications; establishes required delivery terms, bidder qualifications, method of award, and terms and conditions; and provides instruction for responding.

For commodities, award shall be made on the basis of lowest price among responsible and responsive offers. In the case of services, the award must be based on best value. For certain services procurements, best value can be equated to low price.

In addition to the guidance provided below, always review the current statutes, rules, Technical Bulletins and Standard Procedures regarding IFBs.

### **5.2 Steps for Conducting an IFB**

The following steps outline the process:

- Develop specifications for the commodity/service needed referring to State agency purchase of recycled materials (A.R.S. § 41-2662), if applicable;
- Prepare the solicitation document;
- Advertise the procurement opportunity;
- Distribute the IFB to all potential bidders;
- Conduct site visits and pre-bid conferences (as necessary);
- Receive questions and provide responses (as necessary);
- Receive bids;
- Conduct the bid opening;
- Conduct administrative review of bid submissions;
- Verify responsiveness and responsibility of apparent low bidder;
- Make award;
- When necessary, obtain approvals; and
- Issue purchase order or contract.

More detail about each of these steps follows.

#### **5.2.1 Develop Specifications**

Refer to Chapter 4 of these Guidelines.

#### **5.2.2 Prepare the Solicitation Document**

In addition to the product/service specifications, the solicitation informs potential bidders of the nature of the procurement, any statutory requirements, the deadline for submission of bids, the

location where bids must be sent, delivery terms, any special delivery requirements, and the basis for the award (e.g. lowest price).

The solicitation may also include other terms that the procuring agency desires or requires to be in the contract. For example, if the agency chooses to allow for cost adjustments, the basis for the cost adjustment must be specified in the IFB. (Common cost adjustments can be used as the standard measures such as the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) or the Producer Price Index (PPI)). An agency may also include insurance requirements that specific that a bidder must provide insurance on behalf of the State. Insurance requirements, including limits, should be tailored to the scope of the contract. Additional information on insurance requirements may be found in Chapter VII: Best Practices.

Bid instructions should inform the potential bidder of the contact period, the price structure (hourly, per item, per carton, square foot, etc.), the agency's bid protest/dispute resolution policy, performance requirements, contract monitoring, termination rights and any optional requirements. The solicitation should also outline any bidder qualifications that the agency requires, such as licensing, special equipment, financial viability, minimum years of experience, etc. If a specified qualification results in reduced competition, the agency may need to justify the requirement.

The document must inform potential bidders of the State's "reserved rights." A list of reserved rights is included in Chapter III and should be the minimum used. Agencies are encouraged to review the list and add to it, as needed.

The document must inform potential bidders of the method of award—that is, whether the award will be by lot, item, region, or some other method.

### **5.2.3 Advertise the Procurement Opportunity**

Refer to Chapter 3 of these Guidelines.

### **5.2.4 Distribute the IFB**

Once the IFB has been completed and the advertisement(s) placed, the IFB should be distributed to all known bidders and any bidder that requests a copy as a result of the advertisement(s). Potential bidders can be identified through web searches, previous procurements, and the prospective bidders list in the offerurement system. The notice of the IFB must be distributed via the e-Procurement system using the suppliers list registered by NIGP code(s). The notice may be distributed via postal mail, e-mail, or other means.

### **5.2.5 Conduct Site Visits and Pre-Bid Conferences**

Prior to the due date for bids, an agency may require site visits to ensure that bidders are aware of site conditions. The agency may also hold a pre-bid conference to allow bidders to ask questions and/or exchange information with agency staff. The solicitation must identify the date, time and

location of such events, if planned, and whether attendance is mandatory in order to bid. Caution: If mandatory attendance to a pre-bid conference is required, there are no exceptions.

#### **5.2.6 Answer Questions**

The agency should allow a period of time for bidders to submit written questions, and for the agency to provide written responses. All questions raised and answers provided, including those arising during site visits and pre-bid conferences, must be confirmed in writing and shared with all potential bidders.

#### **5.2.7 Receive Bids**

All bids are received electronically in the e-Procurement system. The IFB must state the time and date for the submission of the bids. All bids received are secured electronically and are not opened prior to the date and time of the bid opening. The e-Procurement system does not accept bids after the due date and time.

#### **5.2.8 Conduct Bid Opening**

The bid opening is conducted in the e-Procurement system at the time stated in the IFB. Once opened electronically, all timely bids are opened and recorded. This will create a bid tabulation, which becomes part of the procurement file. The bid tabulation is made available to the public.

#### **5.2.9 Conduct Administrative Review of Bid Submission**

The agency must ensure that the bid submission is complete and accurate. This includes confirming that the bidder understood the specifications and can perform/deliver at the bid price, particularly if there are large variances in the bid prices between the apparent low bid and the next low bid, and ascertaining that all materials are submitted and appendices are signed.

#### **5.2.10 Verify Responsiveness and Responsibility of Apparent Low Bid**

Beginning with the apparent low bid, the agency must verify that: 1) the winning bid is responsive by meeting all mandatory requirements and specifications of the IFB; and 2) the winning bidder is responsive. If the apparent low bidder is not found to be responsive or responsible, the bid must be rejected and the next lowest price bid must be reviewed. In addition, notice should be provided to an apparent low bidder who is being rejected as nonresponsive or nonresponsible.

Note: In the event of a tie bid, the decision as to the winning bid must be made in accordance with A.A.C. R2-7-B312(D).

#### **5.2.11 Make Award**

Once the agency has reviewed and verified the lowest responsive and responsible bidder(s), the award(s) shall be made in accordance with the method of award in the IFB. The agency must retain the supporting documentation as part of the procurement file.

#### **5.2.12 Obtain Approvals**

Contracts whose value exceeds a procurement officer's procurement delegation require approval. Approval requests are submitted to and recorded electronically in the e-Procurement system.

#### **5.2.13 Issue Purchase Order or Contract**

Once the above steps have been completed and all necessary approvals have been obtained, the agency may proceed to issue the purchase order or contract to the vendor.

## **6 REQUEST FOR PROPOSALS**

### **6.1 Introduction**

A Request for Proposals (RFP) is generally used for the procurement of services or technology in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

Appropriate planning is essential for a successful RFP. The first step is to view the process as a project and to develop a timeline of events to meet the agency's programmatic needs and effectively budget staff time. It is also essential to focus on and develop the contract scope of service and deliverables that are required before proceeding to develop the methodology for evaluating proposals.

NOTE: If a vendor participates in the development or writing of the specifications for the RFP, that company is generally prohibited from participating in the procurement. (A.A.C. R2-7-404)

### **6.2 Essential RFP Contents**

An RFP should clearly convey all the information needed for potential bidders to determine their interest in participating in the solicitation and to offer a competitive proposal. At a minimum, the RFP should include language addressing each of the following items:

#### **6.2.1 Table of Contents**

A detailed and accurate Table of Contents improves the ability of potential bidders to grasp and keep track of all aspects of the RFP and to respond effectively.

#### **6.2.2 Description of Program Objectives and Background**

This RFP section provides a general description of the agency's overall objectives and the underlying reasons for the procurement.

#### **6.2.3 Scope of Services (Scope of Work)**

This section generally describes the scope of work (SOW) necessary to meet the agency's needs. The section should include any strategic and tactical plans/direction of the agency to be affected by the required services.

#### **6.2.4 Detailed Requirements/Specifications**

This section details the technical specifications, which may be presented as specific, individual requirements or as a part of a deliverable. Specifications should not be written to favor a

particular vendor and should clearly indicate the agency's needs as well as the performance standards to which the contract will be held. This section should also describe the relative roles and responsibilities that the contractor and the agency are expected to undertake during the term of the contract.

### 6.2.5 Performance Standards

This section should describe the performance standards that will be used to assess the contractor's compliance with the contract requirements. This section can include liquidated damages provisions, if applicable.

### 6.2.6 Mandatory versus Optional Elements in the Response

The RFP should specify which aspects or features of the requested deliverables are critical to the agency, and therefore to the response the offeror provides, based on the following categories:

- **Mandatory** – Minimum required goods or services that the agency deems essential to the program and must be met without alteration. Mandatory requirements should be clearly identified. Not meeting mandatory requirements may be grounds for disqualification.
- **Options** – Goods or services that the offeror most propose, but that the agency is not obligated to purchase.
- **Desirable** – Goods or services that the agency prefers, but that the offeror is not obligated to propose.
- **Alternative** – An approach proposed by the offeror that provides a different solution to the agency need.

### 6.2.7 Overview of the Solicitation Process

This section should provide information about how the agency will conduct the administrative aspects of the solicitation, selection, and contract development process. Procurements must be conducted in accordance with the process described in the RFP.

### 6.2.8 Timeline and Calendar of Events

This section should provide a specific timetable for the procurement process. Important milestones to be specified typically include:

- Dates for Question Submission and Agency Response – The RFP should provide the timeframes for submission of questions and responses to those questions. The method for submitting questions should be stated. The question and answer process may be multi-phased, allowing for questions and answers prior to, during, and/or after the pre-proposal conference. If no pre-proposal conference will be held, the agency should still provide for a question and answer period. Answers provided must be vendor neutral and provided in writing to all potential offerors.

- Date for Pre-Proposal Conference – The schedule should provide the date for the pre-proposal conference if the agency decides to conduct one. Pertinent details such as time, specific location, security sign-in procedures, and parking arrangements should be included. Attendance must be defined as optional or mandatory; if attendance is mandatory, proposals may only be considered from offerors who participated.
- Date for Submission of Proposals – The earliest possible due date for submission of proposals is 14 days after the advertisement appears in the newspaper. However, when selecting the submission date, consideration should be given to timeframes necessary for intervening activities, such as the pre-proposal conference and the question and answer period. Other factors, such as the complexity of the RFP, the time needed for vendors to prepare an effective response and obtain necessary internal approvals, and holidays that may impact availability of the agency and offerors, should also be taken into account.

## 6.2.9 Anticipated Start Date and Term of Contract

The term of the contract and any renewal/extension provisions must be specified in the RFP and the resultant contract.

## 6.2.10 Method of Award

This section should identify the method of award as best value. Best value takes into consideration cost as well as technical or non-cost factors. For certain service and technology procurements, however, best value can be equated to low price. An RFP should be used for the procurement of services even where best value is equated to low price.

The RFP should indicate whether the agency anticipates making a single or multiple award pursuant to the solicitation. If there will be multiple awards, it should also state whether awards will be made by lot, region, type of service, or some other characteristic.

## 6.2.11 Evaluation Criteria

The RFP must present the criteria that will be used for the evaluation of proposals. At a minimum, the agency must disclose in the RFP the relative order of importance or weights that will be applied to the cost and technical components of the proposals. An agency may not change the relative order of importance or weights after the initial receipt of proposals. See Section 6.8.3.

An agency may elect to include in the RFP a more detailed breakdown of the evaluation criteria, such as specifying the relative weights for detailed categories (e.g., Experience = 20 percent, Staffing = 15 percent, energy efficiency = 10 percent, and so forth.) Additional information about developing and using evaluation criteria can be found in subsequent sections of this Chapter.

## 6.2.12 Offeror's Minimum Qualifications

The RFP should state any qualifications that the offeror must meet to be eligible for consideration. Minimum qualifications may address characteristics of the business such as company capacity,

staffing, licenses or certifications, experience (company and/or employee), recently completed projects of similar scope/size, and references. Minimum qualifications cannot be restricted to Arizona only offerors.

### **6.2.13 Mandatory Requirements**

Refer to Chapter 3.

### **6.2.14 Reserved Rights**

The RFP must inform potential bidders of the agency's "reserved rights." A list of reserved rights is included in Chapter III, and represents the minimum that should be used. Agencies are encouraged to review the list and add to it as needed.

### **6.2.15 Method of Issuing Clarifications or Modifications to the RFP**

This section should specify how the agency will issue any clarifications or modifications to the RFP that may arise after it is first issued.

## **6.3 Additional Content Considerations**

### **6.3.1 Prequalification Criteria**

An agency may establish minimally acceptable qualifications that an offeror must meet in order to be deemed responsive. These may include, but are not limited to, adequacy of resources, experience, and past performance. If the agency elects to apply a prequalification screening, it must disclose in the RFP both the prequalification criteria and that offerors not meeting these criteria will be eliminated without further evaluation. Typically, prequalification are scored on a pass/fail basis.

### **6.3.2 Risk Management/Required Assurances**

An agency may opt to mitigate risk by require some form of financial assurance such as a letter of credit, performance bond or insurance coverage.

### **6.3.3 Cost Adjustments**

If the agency chooses to allow for cost adjustments (whether up or down), the basis must be specified in the RFP. Cost adjustments may be based on standard measures such as the Consumer Price Index (CPI).

### **6.3.4 References**



If the agency requires a bidder to submit references as part of the response, the agency must, at a minimum, verify the references provided as part of its evaluation process. If the agency opts to score reference checks, the references must be listed in the order of importance criteria list and be disclosed in the RFP.

### **6.3.5 Insurance**

An agency may include insurance requirements that specify that a bidder must provide insurance on behalf of the State. Insurance requirements, including limits, should be tailored to the scope of contract. Additional information on insurance requirements may be found in Chapter VII: Best Practices.

## **6.4 RFP Distribution and Receipt of Proposals**

### **6.4.1 Advertisement of the Solicitation**

The requirement to advertise solicitations in the Arizona Procurement Code is discussed in Chapter III.

### **6.4.2 Distribution of the RFP**

Once the RFP is finalized, it should be distributed to all known bidders and any bidder that requests a copy as a result of the advertisement(s). Potential bidders can be identified through web searches, previous procurements, and the prospective bidders list in the e-Procurement system. The notice of the IFB must be distributed via the e-Procurement system using the suppliers list registered by NIGP code(s). The notice may be distributed via postal mail, e-mail, or other means.

### **6.4.3 Receipt of Proposals**

As noted above, the agency must state in the RFP the date and time that proposals are due. As a general rule, late proposals cannot be accepted. Exceptions to this are mentioned in R2-7-B307. All proposals are received electronically in the e-Procurement system. All proposals received are secured electronically and are not opened prior to the date and time of they are due. The e-Procurement system does not accept proposals after the due date and time. It is the responsibility of offerors to ensure timely submittals.

## **6.5 Evaluation of Proposals — Overview**

The objective of the evaluation process is to develop and apply criteria that will ensure that proposals are evaluated objectively, fairly, equally and uniformly and that the agency selects the best value solution among the submitted proposals.

Typically, evaluations are an analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and cost proposal

evaluations to arrive at the selection of the proposal deemed to be the best value to the State. Thus, there are up to three distinct parts to the evaluation process:

- Administrative review of prequalification criteria (optional);
- Technical evaluation – An examination of the non-cost elements that were not considered during the administrative review, such as the functional specifications (e.g. hardware requirements, scheduling); and
- Cost evaluation – A comparison of the price proposed (and, at the agency's option, other costs of the project) to the prices and costs of other competing proposals.

More detail is provided in subsequent sections of this Chapter.

## 6.6 Evaluation Team

It is strongly recommended that the agency procurement officer establish an evaluation team. The agency may also establish various oversight roles to provide policy, guidance, and direction for the evaluation process and team, and to ensure the integrity of the procurement. An individual may be designated a lead role to coordinate all activities within the process. In most cases, this the agency's chief procurement officer or a member of the staff who is serving the role as procurement officer for the RFP.

The number and selection of evaluators should be based on many factors including the complexity of the procurement and the level of knowledge possessed by the potential evaluators available to analyze the proposals. There may be rare instances where a single evaluator must be used for the entire technical evaluation, or a portion of it, such as when available expertise for evaluating the technical considerations is limited.

It is strongly recommended that technical and cost proposals be reviewed by different evaluation sub-teams although it is recognized that in limited situations separate teams may not be feasible. Both approaches are addressed briefly below.

### 6.6.1 Separate Team Approach

Under this approach, the technical and cost evaluation teams may conduct their reviews simultaneously.

Technical Proposal Review Team – This team is typically comprised of program and technical experts, and may conduct its evaluation under the direction of a team leader (most commonly the procurement officer). The team is responsible for all aspects of the evaluation of the technical proposal. This may include review of vendor qualifications, such as the number of past projects performed of a similar size and scope, and proposed personnel resources, such as staff capacity. Depending on the nature of the RFP, the team may also be responsible to perform such activities as benchmark tests, site visits, and reference checks.

Cost Proposal Review Team – The cost proposal review team is typically comprised of one individual (usually the procurement officer), but may be a team of people,

responsible for evaluating and scoring the cost proposals submitted in response to the RFP. The cost team works under the direction of the procurement officer.

**NOTE:** While it may be necessary for the cost team to obtain technical information to clarify the association between costs and technical components, the technical evaluators must not be provided with the proposed costs until after their evaluation is complete.

### 6.6.2 Single Team/Evaluator Approach

Under this model, one team or one individual evaluator conducts all evaluations. When a single team/evaluator is used, the cost proposals must remain sealed until completion of the technical evaluation.

## 6.7 Conducting the Administrative Review

At its discretion, the agency procurement officer may conduct an administrative review of proposals to:

- Ensure that all required documents and forms are included in the submission. Proposals found to be materially incomplete may be disqualified as provided for in the RFP.
- Determine on a pass/fail basis that certain minimum mandatory qualifications set forth in the RFP have been met.

Depending on the number and complexity of proposals expected to be submitted, the agency should designate an individual or team to conduct this review, usually the procurement officer.

## 6.8 Conducting the Technical Evaluation

The technical evaluation measures the extent by which a proposal will meet the agency's needs and relies upon the evaluator's expertise in assessing the strengths and weaknesses of each response. The technical evaluation is a critical part of the ultimate goal of determining which proposal presents the best value to the State. The main steps for performing the technical evaluation are discussed below.

### 6.8.1 Development of the Technical Evaluation Criteria

The criteria selected for evaluation must reflect the agency's objectives, scope of services, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results;
- Degree to which the proposal satisfies mandatory, optional, and/or desirable;
- Experience of the offeror in providing the required services and/or technology;
- Management capability of the offeror;
- Offeror's overall past performance;
- Qualifications and experience of the offeror's proposed staff;

- Conformance with the schedule of work set forth in the RFP; and
- Offeror references

## 6.8.2 Assignment of Values to Technical Evaluation Criteria

Once the technical evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. Following are three examples of the ways in which values are typically assigned:

**Example 1:** Points are assigned to each technical evaluation criterion. Evaluators review the technical proposals and assign a score up to the maximum point for each technical evaluation criteria category. Illustration:

- Work plan and methodology to achieve desired end results = 20 points
- Offeror's experience in providing the required services and/or technology = 15 points
- Offeror's management capability = 15 points
- Proposed staffing plan = 10 points
- Conformance with the schedule or work set forth in the RFP = 10 points

**Example 2:** The technical criteria may be considered according to a pre-established scale. Evaluators grade the technical proposals and assign points for each criterion within the scale. Illustration using Proposed staffing plan in Example 1:

- Excellent Staffing Plan = 8-10 points
- Good Staffing Plan = 5-7 points
- Fair Staffing Plan = 3-4 points
- Poor Staffing Plan = 0-2 points

In rare instances, due to the nature of the procurement, alternative concepts for assigning value to the technical criteria may be permissible. In such instances, it is recommended that the procurement officer consult with the State Procurement Office before beginning the procurement.

**NOTE:** The evaluation criteria and the values assigned must be consistent with any information provided in the RFP.

## 6.8.3 The Technical Evaluation Report

The nature, scope, and complexity of evaluation methods vary widely. However, in accordance with A.A.C. R2-7-C316, the evaluation criteria and methodology for evaluating proposals must be completed and may not be changed prior to the initial receipt of proposals. This principle applies to both technical and cost components.

The evaluation report is the tool that will be used by the evaluators to apply the evaluation criteria to the proposals and includes the breakdown of the relative weights (for technical versus cost) into more detailed categories (for experience = 20%, staffing = 15%, and so forth.) The relative

order of importance of the criteria cannot be changed from what was stated in the RFP, but it is not required to give the numerical weights in the RFP. This tool consists of a series of documents used during the evaluation process. This series may include, but is not limited to:

- Evaluator instructions;
- Evaluator confidentiality/conflict of interest statement;
- Evaluator significant procurement role acknowledgment;
- Rating sheet which defines allocation of points;
- Scripted interview questions;
- Scripted reference checks; and
- Oral/product presentation/agenda.

#### 6.8.4 Evaluating Technical Proposals

As a preliminary step, proposals should be reviewed for compliance with the minimum mandatory technical requirements set forth in the RFP. After the preliminary review, the technical proposal evaluation must be conducted as documented in the RFP and the evaluation instrument. The evaluation team members apply scores to the pre-determined criteria and sub-criteria if applicable. Scoring is based on information provided in the submitted proposal. However, additional factors as established in the RFP and/or the evaluation instrument, may be considered. Examples include:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Vendor site inspections;
- Interviews of key proposed managers and technical experts;
- Written proposal clarifications; and
- Best and final offer.

The above factors may be used for non-scored validation purposes, as cumulative information to be considered together with submitted information, or as separately scored criteria. For example:

- A reference check might be used to verify submitted information (e.g., the offeror has in fact successfully complete three jobs of similar size/scope). A reference check might also be used as a separately scored criterion (e.g., the average satisfaction rating from three references is 7 on a scale of 0 – 10.)
- Presentations and interviews might be used as cumulative information along with submitted documentation for scoring a criterion (e.g., experience, work plan). A presentation might also be used as a separately scored criterion.

The procurement officer has the authority to waive mandatory requirements that are not material provided that:

- The RFP discloses to the offerors the State's reserved right;
- The mandatory requirements are not met by all offerors;
- The waiver does not disadvantage the State;

- The waiver does not benefit the proposed contractor; and
- The waiver does not prejudice any non-winning bidder or potential bidder.

Following completion of the initial technical proposal review, evaluation scores are adjusted and finalized as provided for in the evaluation report.

Regardless of the scoring methodology utilized, evaluators must document the basis for the rating using narrative to explain the offeror's strengths and weaknesses, thereby justifying the score. For example:

“The offeror's proposed Project Director was given the maximum number of points because this individual has successfully managed a project of similar complexity and s/he will be critically important to the success of our project.”

## 6.9 Conducting the Cost Evaluation

Methods of calculating costs vary depending on a mix of factors concerning the nature and extent of the services, the costs associated with utilizing the services, and the impact of the services on agency programs and operations.

The two most common methods for comparing the cost proposals are:

### 6.9.1 Conversion of Price to a Weighted Point Score

Points Awarded = (Lowest bid divided by the bid being evaluated) x max points

### 6.9.2 Comparison of Life Cycle Costs

Procurements that entail the expenditure of funds for both the fees associated with the services to be procured (i.e. price) and costs associated with the introduction of the services into the environment (i.e. indirect costs) could be evaluated by analyzing total life cycle costs, defined as the sum of fees and indirect costs including residual value.

Life cycle costs evaluations are required for earth moving, material handling, road maintenance and construction equipment. (A.R.S. § 41-2554)

Once the total life cycle costs for competing proposals have been determined, the life cycle costs associated with each proposal must be converted to a weighted point score using the formula above.

## 6.10 Reference Checks

As mentioned previously, if references are requested then references must be evaluated. The agency should develop a scripted list of questions to ask each reference for all offerors if References has been listed in the published evaluation criteria with an assigned weight. If references are requested but are not listed in the evaluation criteria, reference checks may be limited to only the offerors who are susceptible for award. The following are commonly scripted

questions to ask an offeror's references, but questions should also focus on the specific project requirements:

- What was the scope of the project?
- What was the consultant's name?
- Did the consultant have experience and expert knowledge?
- Did the consultant meet the established project timeline?
- What communications tool did they use?
- Did the consultant stay within budget?
- What types of expenses did you reimburse?
- Overall, what was your satisfaction rate?

## **6.11 Determining the Final Score**

The agency should weigh the technical and cost evaluation results as two components, which together total 100 percent of the evaluation. For example, the technical evaluation could be weighted at 70 percent and the cost evaluation weighted at 30 percent. After the technical evaluation has yielded a technical score and the cost evaluation has yielded a cost score, the scores are weighted and combined to produce a final score for the proposal.

## **6.12 Contract Negotiation**

In cases where the RFP has specifically provided for negotiations of terms and conditions, the agency may engage in negotiation with the successful bidder prior to settling on the contract terms. Revisions must not substantially alter the requirements or specifications set out in the RFP. To assess whether a potential revision constitutes a substantial change, the questions should be asked, "Would other bidders or non-bidders have responded differently if the term or condition to be revised as a result of negotiation had been included in the RFP?" If the answer is "yes" or "possibly," then the provision may not be revised.

## **6.13 Agency-Recommended Award and Notification**

### **6.13.1 Agency-Recommended Award**

The procurement officer's selection of the vendor must be in accordance with evaluation criteria developed prior to the initial receipt of proposals. The procurement officer may reject all proposals or—if provided in the RFP—may reject separate parts of the scope of services.

The procurement officer may award a contract to an offeror if only one proposal was submitted, if the procurement officer documents that the RFP did not restrict competition, the contractor meets the requirements of the RFP, and the cost is reasonable.

### **6.13.2 Notification of Award**

Upon completion of the evaluation and vendor selection, the procurement officer must send notification of award to all successful and non-successful offerors. Notification to the selected

offeror(s) is completed electronically at the time the contract is awarded in the e-Procurement system. The procurement officer should provide non-successful bidders the opportunity for a debriefing, if requested.



## **7 LIMITED COMPETITION PROCUREMENTS**

### **7.1 Introduction**

Limited competition procurements (or also referred to as special purchase types) are types of procurement for an unusual or unique situation. The contract is not awarded based on the application of requirements of an Invitation for Bids or a Request for Proposals that could be conflicting to the public interest or the needs of the agency.

Utilization of limited competition procurements is rare. All limited procurements shall be made with such competition as is practicable under the circumstances. At a minimum, the procurement officer shall execute a negotiation process, if practicable, with the prospective contractor identified for the limited competition procurement.

Procurements less than the informal bid limit do not meet the definition of a limited competition procurement; they are considered a “not practical to quote” purchase. (See Chapter VII for more information.)

There are three types of limited competition procurements available in the Arizona Procurement Code: Sole source, emergency, and competition impracticable procurements.

A limited competition procurement may be justified when:

- Only one source is capable of supplying the product or service;
- There is an emergency situation;
- A number of sources capable of supplying the product or service may exist, but it is determined to be in the best interest of the State to direct the purchase to a particular source or to solicit from a limited and specified list of prospective suppliers; or
- In an unusual situation, a contract reaches its full term and a replacement contract has not been fully executed due to unforeseen circumstances in the solicitation process.

All limited procurement procurements require prior approval and documentation to support the decision to exercise the procurement method.

### **7.2 Sole Source Procurements**

A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase (brand-name only) where the product required is restricted to the manufacturer(s) stipulated, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor’s capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining sole source procurement. Note: For sole source procurements exceeding \$10,000, a written quotation must be obtained from the vendor.

Sole source procurements less than the informal bid limit do not meet the definition of a sole source.

### 7.2.1 Requesting Sole Source Approval

Sole source procurements over the informal bid limit must be approved prior to commencement of the actual procurement using the Sole Source Authorization Request form found on the SPO website. The form should be completed to include information to address the following:

- Explain why this is the only product or service that can meet the needs of the agency.
- Explain why this vendor is the only practicably available source to obtain this product or service.
- Explain why the price is considered reasonable.
- Describe the efforts made to determine the availability of the product or service from any other vendor, including contact with the manufacturer for a list of distributors and resellers, as well as other providers of similar products/services.

### 7.2.2 Posting Requirements

All sole source procurements are required to be advertised for a minimum of three days before submitting for approval to the agency chief procurement officer. The request form is sent to all vendors registered on the prospective bidders list in the e-Procurement system, based on the commodity code for the product or service, using the bulk email option. Vendors are given an opportunity to respond to the sole source request.

### 7.2.3 Approval for Sole Source Procurements

Once the posting requirements have been fulfilled, the request form is given to the agency chief procurement office or the state procurement office for approval. An agency chief procurement officer may approve the request, deny the request, or return the request for additional information. Once written approval has been given, agencies are delegated the authority to proceed with awarding the contract.

### 7.2.4 Negotiating a Contract

Upon approval, a contract shall be negotiated and awarded without competitive sealed bidding or competitive negotiation. In making sole source procurements, it is the procurement officer's responsibility to negotiate a contract that is in the best interest of the State. Negotiations can be conducted on adding terms and conditions favorable to the State and deleting or changes terms that are one-sided, in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiation, one must be exceptionally well prepared and negotiate to the extent that is practicable. Written document of the negotiations shall be included in the procurement file.

### **7.2.5 Price Reasonableness Determination**

The agency should carefully research the good or service and determine in writing what is a fair and reasonable price. For example, if the good or service has been provided before, find out what price was previously paid. Research and determine if another agency has purchased the same item. This will provide valuable pricing information that can be used in the course of negotiations and in determining price reasonableness.

### **7.2.6 Award Document**

Agencies must issue an award document (PO or contract) for sole source purchases in accordance with provisions of the Arizona Procurement Code. When a quote has been obtained from the vendor and no further negotiations are needed, a purchase order is acceptable. When complicated negotiations have been involved, it may be in the agency's best interest to use a contract.

## **7.3 Emergency Procurement**

An emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The potential loss of funds at the end of a fiscal year is not considered an emergency.

### **7.3.1 Types of Emergency Procurements**

The nature of the emergency will determine what pre-award action may be taken:

- For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances. This does not relieve the agency from negotiating a fair and reasonable price and subsequently documenting the procurement action.
- For other types of emergencies, competition should also be sought to the maximum extent practicable. The Procurement Officer may check the vendor's qualifications, verify insurance coverage, if applicable, as well as review information on warranty offered, and any other data pertinent to the procurement. An agency may procure materials, equipment or supplies above its delegated authority with the advance written approval of the state procurement administrator.

### **7.3.2 Award of Emergency Procurements**

The agency must prepare a confirming contract or agency purchase order, as soon as practicable, after directing the contractor to proceed. Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.

### 7.3.3 Documentation

Agencies shall prepare a written determination for signature by the agency chief procurement officer or the state procurement administrator indicating the nature of the emergency, the reason for selecting a particular contractor and include such determination in the procurement file.

### 7.3.4 Emergency Planning

In many cases, procurement planning can reduce the need for using emergency procedures. Each agency should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. Information on rates and charges should be established and agreed upon in advance. In addition, "on call," "as needed" annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

## 7.4 Competition Impracticable Procurement

A competition impracticable procurement is a procurement that makes compliance with the competitive sealed bids or competitive sealed proposals impracticable, unnecessary or contrary to the public interest, but which is not an emergency as defined above.

Examples of when the use of this procurement method include standardization, warranty, or other factors. Competition Impracticable procurement shall not be used unless there is clear and convincing evidence that competition is impracticable. An agency requesting a competition impracticable request submits a written explanation as to why no other vendor would be suitable or acceptable to meet the need. The agency requesting competition impracticable procurement shall provide written evidence in support of determination containing the following information:

- An explanation of the need and the unusual or unique situation that makes compliance with competitive procedures impracticable, unnecessary or contrary to the public interest;
- A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
- An explanation of why the proposed procurement process is advantageous to the State; and
- The scope, duration, and estimated dollar value of the procurement.

Upon prior approval, the procurement officer shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the State. (A.A.C. R2-7-E303)

Examples of competition impracticable procurements include, but are not limited to:

- In the case of a new facility construction where systems are installed as part of the construction project that have warranty terms that require additional modifications, programming changes or other items outside of normal warranty-related items during the warranty period be completed by original installing vendor or the warranty is void.
- Items or services that are a State-wide or agency-wide standard. (Business-decision justification to support standard has been established.)

- Software or hardware service/upgrade maintenance agreements where the original purchase was procured through the competitive process and the original maintenance agreement has expired.
- In rare instances, when a contract for routine, ongoing products or services is due to expire and the new solicitation has not yet been awarded.

## 8 INFORMAL SOLICITATIONS

Informal solicitations are used for purchases between \$10,000 and \$100,000. Informal solicitations are those that fall into a dollar threshold that requires competition but does not require a formal procedure. In this dollar range, if competition is deemed impracticable, the Procurement Officer shall include a written Not Practicable to Quote determination in the procurement file. The purchase shall be made with as much competition as is practicable under the circumstances. Agencies may conduct informal solicitations for purchases within their procurement authority delegation. Informal solicitations are conducted in the e-Procurement system.

There are three main types of informal solicitations available:

- Bid-style Request for Quotation – most commonly used for commodities and non-professional services when pricing will be the only determining factor. The result may be a one-time purchase or a term contract.
- RFP-style Request for Quotation – most commonly used for professional services or when the award is based on price and additional qualitative characteristics. The result may be a one-time purchase or a term contract.
- Informal Quote – most commonly used for one-time commodity-type purchases. Turnaround time on informal quotes can range from two days to two weeks. The quote documents may be a simple, single page or may have limited attachments.

If establishing a term contract, it is recommended that the term be limited to three years. In addition, note that the contract value for the full term (regardless of the number of years) must be less than the informal bid limit of \$100,000; otherwise a formal process is required.

Informal solicitations are part of the small business set-aside. Refer to A.A.C. R2-7-D302 for general instructions on the small business requirement.

## 9 CONSTRUCTION CONTRACTS

### 9.1 Construction

Construction Services includes a combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Construction Contractor performance of construction services is authorized through the following *Alternate Project Delivery Methods*:

- Construction-manager-at-risk (CMAR)
- Design-build
- Job-order-contracting (JOC)

Factors considered by the procurement officer in determining if an *Alternate Project Delivery Method* is in the best interest of the state for the procurement of the construction:

- Cost and cost control method
- Value engineering
- Market conditions
- Project Schedule
- Any Required specialized expertise
- Technical complexity of the project
- Project management

#### 9.1.1 Simplified Construction Procurement Program

An informal construction procurement not requiring performance of construction services procured in accordance with A.R.S. §41-2535, Part D. is known as the simplified construction procurement method.

- Refer to Chapter 8 of these Guidelines

#### 9.1.2 Competitive Sealed Bidding

A construction project may be procured through Competitive Sealed Bidding when the cost will exceed the limits in A.R.S. §41-2535.

#### 9.1.3 Best Practices for Construction Procurements

- Conduct Pre-Bid/Pre-Offer conference at the construction project site and upon conclusion of conference conduct a site walk with Project Manager and Design Professional of the project so the Contractor can assess the projects site conditions.
- Include the construction project full physical address where Work will be performed in the advertisement notice.

#### 9.1.4 Request for Qualifications (RFQual)

For Alternate Project Delivery Solicitation Highlights (not inclusive of all purchasing code requirements for the solicitation, refer to each delivery method as stated in the APC for additional requirements)

#### **9.1.4.1 General Information**

- No cost information (fees, price, man-hours etc.) shall be requested or considered by the agency or selection committee at any point in the selection process including persons or firms to be interviewed or determining the final list or order on the final list.
- Contracts are awarded on the basis of demonstrated competence and qualifications to provide the type of services required for the project.

#### **9.1.4.2 Provide Public Notice**

Refer to Chapter 6.4 Advertisement of Solicitation

#### **9.1.4.3 General Requirements**

Refer to Chapter 6.2 Essential RFP Contents through 6.29 Anticipated Start Date and Term of Contract

- The Term of Contract will generally state the required number of calendar days the Contractor must achieve substantial completion of the project from the date the agency issues the notice to proceed, and the number of calendar days from substantial completion the Contractor must achieve final-completion.
- Include life cycle budget for a procurement that includes maintenance services or operations services

#### **9.1.4.4 Instruction to Offerors**

- State that one contract may or will be awarded, describe the services to be performed under the contract and state that one person or firm may or will be awarded the contract.
- State the number of persons or firms to be on the final list in accordance with A.R.S. §41-2578.
- State the selection criteria and the weighting of the criteria specified for scoring:
  - One of the selection criteria shall be the person's or firm's subcontractor selection plan or procedures to implement the purchasing agency's subcontractor selection plan.
  - The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list:
    - Solely through the results of the interview process; **or**
    - Through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.



- State the number of Contractor interviews that will be held with in accordance with A.R.S. §41-2578.
- If no interviews will be held, state no interviews will be held.
- A brief description of the construction services to be performed at the location(s).
  - The estimated budget for the construction services to be performed at each location.
  - A schedule for the construction services to be performed at each location that shows the purchasing agency's intent to commence all construction at each location within thirty months after execution of the first contract for preconstruction services or other construction services at any of the locations.
  - The construction project address(es)
- Bid Security submission and directives for delivery to procurement officer (as required based on the estimated cost of construction)
  - DBB requires ten percent (10%) of the Contractor's bid amount
  - Design-build or CMAR is ten percent (10%) of purchasing agency's construction budget for the project as stated in the solicitation excluding any finance services, maintenance services, operations services, pre-construction services or any other related services included in the contract.
  - JOC bid security in the amount determined by the purchasing agency not to exceed ten percent (10%) of the amount the agency believes will be likely be performed for the contract in the first year, excluding any finance services, maintenance services, operations services, pre-construction services or any other related services included in the contract.
- Performance and Payment Bond requirements (for projects exceeding amount established in A.R.S. §41-2535).
  - Bond surety shall hold a certificate of authority to transact surety business in the State issued by the Department of Insurance.

#### **9.1.4.5 Terms and Conditions Inclusions**

- Include Insurance requirements with the addition of Builders Risk for all construction projects; with the addition of Professional Liability for all Design-build projects, or JOC projects if the agency requests the Contractor to hire the design professional for design services for the project.
- Liquidated Damages clause
- Warranty requirements
- Contractor Testing requirements
- Protest policy

### **9.1.5 Selection Committee Members**

All Alternate Project Delivery Method selection committees shall include:

- A registered Design Professional (cannot be the Design Professional of record for the project), **and**
  - A licensed Construction Contractor senior management employee, **and**
  - A minimum of one employee or representative (outside consultant) of the purchasing agency.
  - Total selection committee members cannot exceed seven (7) members.

- The Design Professional or Construction Contractor senior management employee may be employees of the purchasing agency or outside consultants.
- Outside contractors, architects, or engineers serving on a Selection Committee shall not receive compensation from the purchasing agency.

#### **9.1.6 Final List Notification**

When the agency notifies the final list persons or firms on the final list, the agency must notify the non-final list persons or firms in one of the following manners dependent on if interviews were or were not held:

- If interviews held, the non-final list firms shall be notified of the firms interviewed.
- If interviews were not held, the non-final list firms shall be notified of the other persons or firms that submitted qualifications for the solicitation.

#### **9.1.7 Negotiation with Persons or Firms on the Final List**

- Negotiations shall include consideration of compensation and contract terms the procurement officer determines fair and reasonable (e.g. the scope of services, estimated value, complexity of project).
- Negotiations shall be conducted with the highest qualified person or firm on the final list only – until a negotiation is reached or the procurement officer formally terminates negotiations with the person or firm.
  - Only upon formally terminating negotiations with the highest qualified person or firm on the final list, can negotiations be conducted with the next most qualified person or firm on the final list.
  - The procurement officer cannot recommence negotiations with any Offeror with which negotiations were terminated.

#### **9.1.8 Contract Payment Retention or Use of Substitute Security**

- Retention of ten percent (10%) of construction contract payments are withheld to ensure Contractor proper performance of the contract.
- Retention shall be reduced to five percent (5%) at fifty percent contract completion if the Contractor is making satisfactory progress of the contract.
- If Contractor is making satisfactory progress at fifty percent contract completion and there is no claim requiring a greater amount be held, the Contractor can request the agency pay one half of the amount retained (or securities substituted) be paid to the Contractor.
- No retention shall be withheld for JOC contracts.
- Agency has the option to withhold retention for CMAR or Design-build contracts.
- Retention is not withheld for the portion of any progress payment that may be requesting payment for design services, preconstruction services, finance services, maintenance services, operations services or any other related services in the contract.
- If the contract was awarded with separate divisions upon which price was specifically stated separately in the contract, the agency may release the division retained percentages in full (less any deductions for written finding deficiency) upon completion of the division (not applicable if a substitute security was provided by Contractor).

- In lieu of retention of contract payments, the Contractor may submit an approved substitute security in accordance with R2-7-510 and all interest accrued shall be to the benefit of the Contractor.
  - Contractor shall retain the interest until the purchasing agency has approved completion and acceptance of the work under the contract.
- No later than sixty (60) days after final-completion, the retention or substitute securities withheld are required to be returned to the Contractor, unless the agency has a specific written finding by the purchasing agency of the reasons justifying the delay in payment to withhold all or a part of the funds the agency ascertains necessary to discharge the deficiency justified in the written findings.

### 9.1.9 Progress Payments

Paid to the Contractor based on an approved estimate of the work performed in a construction contract and subject to retention.

- The Agency has seven (7) days from the date of the Contractor's submission to issue a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. If no written finding is issued, the estimate of the work performed is considered approved and the Agency must submit payment to the Contractor within fourteen (14) days.
- Contractor may pursue the Agency for delayed payments received after the due date for interest in the amount of one percent per month or a fraction of the month on the unpaid balance as may be due on any payment beginning the eighth (8th) day past due.
- Any subcontractor, material supplier, or design professional performing work for the Contractor under contract can request in writing the purchasing agency to provide notice within five days of an issuance of a progress payment to the Contractor. The written request remains in effect for the duration of the time the subcontractor or design professional continues to provide work under the contract.

### 9.1.10 Design-Build Highlights

- The design and construction services are contracted with a single entity known as the design-builder or design-build contractor.
- Design-build allows the Contractor, Design Professional and subcontractors to propose best-value solutions for various construction elements before the design is complete to identify and address issues of cost, schedule and constructability.
- This contracting method places the responsibility for design errors and omissions on the design-builder.
- The solicitation must state the project final budget for design and construction.
- A Stipulated Fee shall be awarded in amount of not less than two tenths of one percent of the projects stated final budget for design and construction to each responsive but unsuccessful final list Offeror.
  - The agency shall state the Stipulated fee amount in the solicitation.
  - Fee is payable to each final list Offeror within ninety days of contract award or the determination to not award a contract (cancel the solicitation).
  - If a final list Offeror accepts the stipulated fee payment, the procurement officer may use any ideas or information contained in the proposal (not determined

confidential) in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the Offeror.

- The agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
- This procurement method is limited to construction services being performed at a single location, a common location or, if the construction services are all for a similar purpose, multiple locations.
- Typically procured in a two-step process:
  - The procurement officer issues a Request for Qualifications and each Offeror submits a statement of qualifications which is reviewed and scored by the selection committee in accordance with the scoring method and the number of points allocated to each factor established in the solicitation.
  - The final list of Offerors is the highest scoring three (3) Offerors under the scoring method in the Request for Qualifications.
  - The procurement officer subsequently issues a Request for Proposal to the final list Offerors requesting submittal of a technical offer and separate price proposal.
    - The price proposals shall not be opened until all the technical offers have been scored by the selection committee. Upon completion of the scoring of the technical offers the price proposals are scored. The price proposal shall be a fixed price or guaranteed maximum price.

#### **9.1.11 Construction Manager-at-Risk Highlights**

- The Agency has a separate contract with a Design Professional and a Contractor.
- The Contractor acts as a “consultant” to the agency during the design development and construction phase by providing cost estimates, reviewing constructability, providing value engineering, and coordinating the work, managing and controlling the cost of the project to ensure budget success.
- The Contractor is committed to complete the project within a stated Guaranteed Maximum Price (GMP) based on the construction documents and specifications at the establishment of the GMP.
- Changes in scope or will result in a change order and increase the GMP.

#### **9.1.12 Job Order Contracting Highlights**

- Indefinite delivery indefinite quantity construction
- The maximum dollar amount of an individual job order shall not exceed one (1) million dollars.
- Contractor’s bid a coefficient to the standard individual tasks established unit prices to do all or part of the work (subcontract the work) under one or more job orders.

## **9.2 Design Professional Services**

### **9.2.1 Selection Committee Members**

The purchasing agency determines the number and qualifications of the selection committee members.

- A minimum of one employee or representative (outside consultant) of the purchasing agency.
- Any Outside contractors, architects, or engineers serving as Selection Committee members shall not receive compensation from the purchasing agency.

## **9.2.2 Annual Professional Services Qualifications List**

In accordance with A.R.S. §41-2581, the State solicits an annual statement of qualifications and experience for "professional services" which includes architect services, engineer services, landscape architect services, assayer services, geologist services and land surveying services and any combination of those services.

The annual professional services list awardees reside on the State Procurement Website at <https://spo.az.gov/procurement-services/professional-services>

Agencies and cooperative members utilize the list to choose three design professionals to interview (when practicable) in accordance with the Guidelines as listed on the State Procurement Website for services expected to exceed ten thousand dollars.

Services by an architect or architect firm elected from the annual professional services list cannot exceed two hundred and fifty thousand dollars or services by a person or firm other than an architect (as described above) cannot exceed five hundred thousand dollars.

## **9.2.3 Single Contract for Design Professional Service Highlights**

### **9.2.3.1 Statute**

- Procured in accordance with A.R.S. §41-2578.

### **9.2.3.2 General Information**

- Refer to Chapter 9.1.4.1 Guidelines
- An agency may enter into multiple contracts for difference phases of a single project.

### **9.2.3.3 Public Notice**

- Refer to Chapter 6.4 Advertisement of Solicitation

### **9.2.3.4 Instruction to Offerors**

- State that one contract may or will be awarded, describe the services to be performed under the contract and state that one person or firm may or will be awarded the contract.
- State that three persons or firms will be on the final list and will be ranked in order of preference.
- State the selection criteria and the weighting of the criteria specified for scoring:

- The request for qualifications also shall state whether the purchasing agency will select the persons or firms on the final list and their order on the final list:
  - Solely through the results of the interview process; or
  - Through the combined results of both the interview process and the evaluation of statements of qualifications and performance data submitted in response to the purchasing agency's request for qualifications.
  - State the number of interviews that will be held will be with at least three and not more than five persons or firms.
  - If no interviews will be held, state no interviews will be held.

#### **9.2.3.5 Terms and Conditions**

- Insurance requirements include Professional Liability
- Protest policy

#### **9.2.4 Final List Notification**

When the agency notifies the final list persons or firms on the final list, the agency must notify the non-final list firms in one of the following manners dependent on if interviews were or were not held:

- Interviews held the non-final list firms shall be notified of the firms interviewed.
- If interviews were not held the non-final list firms shall be notified of the other persons or firms that submitted qualifications for the solicitation.

#### **9.2.5 Negotiation with Persons or Firms on the Final List**

- Negotiations shall include consideration of compensation and contract terms the procurement officer determines fair and reasonable (e.g. the scope of services, estimated value, complexity of project).
- Negotiations shall be conducted with the highest qualified person or firm on the final list only – until a negotiation is reached or the procurement officer formally terminates negotiations with the person or firm. Only then can negotiations be conducted with the next most qualified person or firm on the final list.

## 10 INFORMATION TECHNOLOGY CONTRACTS

### 10.1 Introduction

Information Technology (IT) related contracts are utilized to procure computer hardware, software, hosted solutions, security, networking, and technology focused professional services.

More specific examples of the types of contracts written in each of those 6 areas are:

- **Hosted Solutions** – eLicensing, Health Activity Reporting, Document Management, and Prescription Drug Monitoring Programs, etc.
- **Networking** – Wireless, Carriers, Networking Equipment (including Security), and Cabling, etc..
- **Hardware** – Laptops, Desktops, Computer accessories, Servers, other Data Center support materials and products, 2-way Radios, Global Positioning System (GPS) equipment, Uninterruptible Power Supply (UPS) equipment, and Audiovisual (AV) Equipment, etc.
- **Software** – The State utilizes a software value-added reseller (SVAR) for off-the-shelf software related needs including but not limited to: application software, Software-as-a-service, specific IBM mainframe software, Microsoft client desktop and server software, Linux support, etc. For the remainder of the software purchase needs and custom development, competitive sourcing is required.
- **Security** – on-premise and cloud-based implementation of the key security controls used across the enterprise desktops, servers, and computing appliances.
- **Professional** – professional support for network implementation, Enterprise Computing Services (5 towers of professional services related to mainframe, data center switching, security, etc) professional services running call centers, IT Research and Advisory Services, organizational assessment services, telecommunication expense management, and legal research, management of the State's voice and data network (AZNet), etc.

### 10.2 Scope of Transactions

IT-Related contracts are similar to contracts of other category teams. The State strives to obtain the best value for the agencies and other non-agency governmental units such as counties, cities, towns, municipalities, school districts, and qualifying non-profits.

In most cases the IT statewide contracts are of a high dollar value and are generally 5 years in maximum duration. Some very specific technology and IT contracts can be written for 7 to 10 years in select areas where this is found to be advantageous to the state, however these exceptions require the State Procurement Administrator's prior authorization. For the majority with a 5-year total maximum duration, the initial term may be 1 or 2 years. Due to the rapid change of the

technology marketplace and the products and services themselves, it is best to review these contracts as needed, annually at a minimum.

Cooperative purchasing spend against these statewide IT-related contracts can far exceed the state agency spend. These statewide IT-related contracts require one to pay close attention to spend data, not just state agency spend, as well as vendor performance.

### 10.3 General Guidelines

IT-Related contracts follow the same procurement rules as other types of contracts, with the exception of Article 5 procurements. Due diligence is achieved by analyzing industry trends with our partners in Arizona Strategic Equipment Technology (ASET) and the IT divisions and organizations within the agency and non-agency governmental units to determine the basic needs of the contracts.

Strategic thinking is necessary on the part of the procurement officer as they are the deciding factor when choosing from multiple sourcing strategies, such as: Single Awards, Multi-Award, Managed Service Provider (MSP), Master Service Agreement (MSA), etc. Evaluating the technical, tactical, and regional needs of the agencies and cooperative customers, decisions must be made about the optimum number of awardees to best meet the needs of the State. To provide for the best competition in the Task/Work Order process, most of the contracts are multiple award. Because of the complexity of the markets that we serve, some awarded contract sets include distributors and resellers and/or direct manufacturers.

In addition to issuing solicitations and managing statewide contracts, SPO also evaluates and potentially utilize national contracts from other Cooperative entities such as NASPO Value Point, U.S. Communities, GSA, and potentially others. The State leads and utilizes national cooperative contracts. The State Procurement Office is the only authority in the State that can sign participating addendums with awarded vendors on behalf of the State. The State Procurement Office does this when the services and products along with the respective pricing and terms and conditions offered are in the best interest of the state. Close scrutiny is needed to ensure that the national cooperative contracts offer better value to the state.

As the technology landscape evolves quickly and industry players come and go as well as merge with others, Requests for Information (RFIs) are conducted to facilitate early engagement with the industry and to learn more about the latest technology trends. These RFIs will inform the Request for Proposals (RFPs) cycles and provide great input into the Statements of Work (SOWs) that are included within the subsequent RFPs.

For Software, as much as feasible, a Software Value-Added Reseller (SVAR) model is utilized. Using an SVAR is an example of the use of a MSP contract mentioned previously. When an exclusive contract is granted to one SVAR, the contract is traditionally written for up to 5 years. The SVAR then creates and maintains reseller agreements with the myriad of software publishers. The SVAR maintains reseller agreements with hundreds of software publishers for software to meet the needs of the state agencies and non-agency governmental units. The procurement process for software is straightforward using an SVAR. Taking advantage of the value-added aspect of the relationship helps SPO understand the specific market for that type of software; the SVAR will suggest publishers and help us schedule demonstration, and get respective budgetary pricing.



After the desired software is selected, the SVAR to provide a specific quote for the software and terms and conditions needed. The SVAR will then get a quote from the respective software publisher and pass that through. While demonstrations, discussions and negotiations are conducted directly with the software publisher, the financial transactions are through the SVAR. Each agency or non-agency governmental unit is still required to review and negotiate its own terms and conditions with each software publisher. This may require approvals from SPO or Risk Management.

## 10.4 Special IT-related Terms and Conditions

The State utilizes a set of terms and conditions for IT related contracts that help us define the Data and Information Handling, Data Protection and Confidentiality and other specific Information Technology needs. These terms and conditions are specifically designed to describe and define personally identifiable information (PII), protected health information (PHI and ePHI), and how to handle these data in the event of a contract termination.

The Uniform and Special IT-related Terms and Conditions also describe the requirement of the vendors related to data breaches, that is, inadvertent and/or intentional releases of state information.

Within the breadth of IT-related contracts, the applicability of the IT terms and conditions for Invitation for Bids (IFBs), RFIs, Request for Quotes (RFQs), and RFPs is carefully considered. Relying on State IT Policies, security background checks may be conducted on all vendor personnel that will work in information technology and/or handle data. In addition, specific system measures and individual measures are utilized for anyone requiring information access. System measures include system management and maintenance, fraud prevention and detection, data encryption at-rest and in-motion. Individual measures are related to state policies for data access, privacy, user IDs and passwords. The related terms and conditions ensure that the contractors credentials are only used by the person to whom they were issued and for the intended purpose.

In addition to the basic access and use described above, the IT-related terms and conditions also cover Cloud Applications, Cloud hosting services, and Cloud Service Providers (CSPs). For these Cloud related uses, the vendor must complete a Baseline Security Controls Questionnaire and/or use an approved hosting service. The state may choose to conduct penetration testing and the vendor is required to collect and share system logs. These system logs are then added into the State of Arizona Systems Information Event Monitor (SIEM) systems and tools.

The additional IT related terms and conditions cover aspects of pass-through indemnification, and system and controls needs related to that pass-through indemnification, third-party intellectual property, redress of infringement, first party liability limitation, information technology warranties, and other related specific remedies.

## 10.5 Used Equipment

There are no specific provisions describing the procurement or acquisition of used equipment within the Arizona Procurement Code or within the ASET Policies and guidelines. That said, in

consideration of the risks involved, the potential limitations of warranties and the potential savings, the procurement of used equipment is generally not done.

## **10.6 Disposal of Equipment**

There are no specific provisions describing the disposition of used equipment within the Arizona Procurement Code or within the ASET Policies and guidelines. For systems that have measurable value it is prudent to utilize the process and procedures of the Surplus Property Management Office (SPMO) organization within the Arizona Department of Administration. The Surplus property management manual can be found on the ADOA website. Additional consideration of the sensitivity of the data and or IT systems included should be discussed and handled through SPMO. IT Assets Data destruction and IT Assets disposal standards and directions are included within the manual.

## 11 CONTRACT ADMINISTRATION

### 11.1 Introduction

Contract Administration is a term used to describe the functions that are performed after the parties have signed the contract. Typical contract administration activities are goal oriented, aimed at ensuring enforcement of the contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract. Contract administration requires that all parties clearly understand the contract, cooperate and act in good faith with mutual confidence and respect. The specific nature, extent and effort required to administer the contract depends on the requirements, complexity, value and importance of the contract. Simple contracts for delivery of off-the-shelf products may require minimal administration. Complex contracts may require full-time monitoring and administration. The level of effort and roles and responsibilities in administering each contract should be clearly understood by all parties before performance begins.

Contract administration is a team activity with specific roles and responsibilities assigned. Some may be assigned within the contract itself (such as reporting), and others assigned by the organization using the contract. The buyer, as end-user of the contract, is a key contributor of timely performance feedback to the contract officer, or the Procurement Officer for Single Agency Contracts.

For complex contracts, a high level of administration is recommended. The agencies which use the contract are expected to perform at least the basic contract administrative duties and inform the contract owner in a timely manner of issues and resolutions to those issues.

Contract administration is a set of processes, after the award of a contract, whereby the agency and contractor work collaboratively, in good faith, and in mutual confidence to ensure the contract is performed to the agreed level of service, quality, and terms and conditions. Depending upon the complexity of the contract, the agency should delegate a procurement officer's representative, with specific written authorities, to monitor and administer the contract. Written authority should identify the contract, customer agency, the procurement officer's representative, terms, and duties being delegated.

For contracts serving multiple customer agencies a contract administration team may be necessary to adequately monitor and administer the contract. Contract administration teams, who report to the procurement officer, should be responsible for receiving and accepting deliverables, reviewing and authorizing invoices for payments, and conducting periodic progress meetings.

Agencies may not sub-delegate the following duties to a procurement officer representative:

- Enter into supplemental agreements for service or materials, issue changes, or suspensions
- Interpret the contract to add or delete requirements
- Modify any terms of the contract
- Terminate the contract
- Make Assignments
- Commit the State in any matter except as specifically authorized by the contract

### 11.2 E-Verify Requirements

Each fiscal quarter the State Procurement Office (SPO) will randomly sample approximately 10% of

active contracts in the immediate prior fiscal quarter whose dollars spent to date are \$100,000 or more. Agency chief procurement officers, or designee, upon receipt of a list of contracts selected by SPO for random review shall issue notices to the selected contractors on agency letterhead. Agencies give contractors 21 days to respond to the first notice. A second notice shall be sent, if the agency does not receive a response to the first notice, which will provide the contractor an additional 14 days to respond. Finally, if no response is yet received by the agency, the agency shall give the contractor a third and final notice providing the contractor an additional 14 days to respond.

The agency shall track responses to the notice and submit a report of verification results to SPO. The agency should log the dates that the verification forms are sent to, and responses received from, the contractor. The agency should take appropriate action to non-compliance to E-Verify requirements. Such action includes:

- Documenting contractor failure to respond to notices
- Completing a Vendor Performance Report for failure to respond to all three notices (Refer to Chapter 12 of these Guidelines)
- Additional action up to, and including, termination of the contract
- Notify the Arizona Attorney General's Administrative Law Section, Financial Division, of evidence of contractor hiring individuals not authorized to work in the United States.

### **11.3 Certificates of Insurance**

Work may not be performed without a Certificate of Insurance in the contract file which conforms to the indemnification clause, including minimum scope and limits of insurance, as mandated by the contract. The Certificate of Insurance (ACORD 25) is generally effective for a one year term as of the date it was originally issued. The procurement officer representative should identify the expiration date of the Certificate of Insurance to ensure an updated certificate is obtained prior to expiration. The Certificate of Insurance should reflect the agency, and its address, as the additional insured. Certificates are to be emailed by the insurance carrier directly to the contracting agency.

### **11.4 Vendor Performance Management**

Refer to Chapter 12 of these Guidelines

### **11.5 Right of Offset**

In the event a contractor performs, or delivers, non-conforming performance per the contract, the State is entitled to offset any expenses, costs, or damages incurred by the state against sums due to the contractor. In the event the agency determines to exercise this right, the agency should issue a notice to the contractor of its intention to invoke its right to offset, and the circumstances leading to this right, and the amounts subject to offset. Additionally, the procurement officer representative should coordinate with the General Accounting Office to ensure accurate funds, minus the offset amount, are distributed to the contractor.

### **11.6 Contract Termination**

The potential need to terminate a contract may arise from several different circumstances, including:

- Conflict of Interest
- Payment of Gratuities
- Suspension or Debarment
- Default

- Convenience

As addressed earlier in this chapter, termination of a contract is a task that is not sub-delegated to a procurement officer's representative. Rather, this responsibility is retained by the agency chief procurement officer and immediate designee. However, the potential need to terminate a contract may be identified through the contract administration functions of the procurement officer's representative and should be immediately brought to the agency's attention.

#### **11.6.1 Conflict of Interest**

Procurement officer representatives should maintain awareness of contractor representatives with whom contract administration corresponds. If at any time the procurement officer representative becomes aware that a former State employee, of whom had a significant procurement role in the initiating, negotiating, drafting, or creating of the contract, is employed or sub-contracted by the contractor, a potential conflict of interest may exist. This potential conflict of interest should be immediately brought to the agency's attention.

#### **11.6.2 Payment of Gratuities**

A gratuity is defined as either employment or a payment, which was either offered or made, to an officer of the State for the purposes of influencing the outcome of the procurement, an amendment, favorable treatment, or the making of a determination about contract performance. Suspicion of gratuities paid or offered by the contractor should be immediately brought to the agency's attention. Gratuities might not always seem obvious or even have ill-intent, and the agency should be made aware of each circumstance to handle it appropriately. For example, contractor delivery of holiday cookies should be discouraged, whereas an envelope of cash is almost certainly illegal.

#### **11.6.3 Suspension or Debarment**

Contract administration activities by a procurement officer representative also necessitates ongoing and routine monitoring of contractor performance throughout the public sector. Although it is the responsibility of the contractor to notify the State if they become debarred or suspended in any governmental body, the procurement officer representative should also routinely monitor the SPO Website for suspended or debarred contractors as well as the US Government's website [www.sam.gov](http://www.sam.gov). As a best practice, review of the contractor's suspension or debarment status should correspond with the contract's extension or renewal schedule.

#### **11.6.4 Default**

The act of contract administration includes collaboratively working together with end-users and the contractor to ensure the contract's terms and conditions are satisfied as well as the quality of goods and services are as expected. However, during the course of contract administration it may become apparent that the contractor is not performing as agreed, which may lead to submittals of Vendor Performance Reports, Demands for Assurance, and Right to Offset. In addition to end-user dissatisfaction, the procurement officer representative should be vigilant to ensure the contractor maintains all required insurance policies, bonds, licenses, and permits.

As a best practice, review of the contractor's insurance and licensing requirements should correspond with each document's respective expiration date and at contract extension or renewal. Failure by the contractor to respond to, or remedy, a Demand for Assurance, should be immediately brought to the agency's attention for potential contract termination for default.

### **11.6.5 Convenience**

The State reserves the right to terminate a contract, in whole or in part, at any time when it is in the best interest of the State. Determination to terminate a contract for convenience is held by the agency chief procurement officer and immediate designee. In the event of contract termination for convenience, the contractor is entitled to receive just and equitable compensation for work in completed and in progress. It is the agency's responsibility to ensure, as of the date the notice of termination for convenience is received by the contractor, that any further costs incurred are minimized.

### **11.6.6 Transition**

Transition activity must be managed by the Procurement Officer when an existing contract is being terminated and transferring projects/people/responsibilities to a new Contractor(s) using same Business Model or a new Business Model. This often requires training of End Users (Departments, Coops).

Transition as a part of Disentanglement activities as termination of a Contract. Related to above but must be addressed in terminating Contract(s) as well as new Contract (s).

## **11.7 Contract Amendments**

Amendments to contracts can be used to renew or extend contracts, as well as to implement pricing changes. An amendment to a contract can be authorized in a contract provided the extension or option was evaluated as part of the original offer. If not evaluated as part of the original offer, the change order, or aggregate of change orders, or amendment is in excess of 25% the State Procurement Administrator, or if a construction contract, the Assistant Director of General Services, determines in writing that the modification is advantageous to the state and the at the price has been determined to be fair and reasonable.

### **11.7.1 Assignments and Delegations**

Contractors cannot assign or transfer their obligations under a state contract without the written authority of the procurement officer. When a company is bought out and another company takes over, if the tax id changes then the procurement officer should ensure the new organization meets all of the requirements of the contract prior to authorizing the assignment.

If a contractor wants to change the name of the organization holding the contact, the state may do so only upon receipt of a document indicating the name change request, a written amendment making the change and a statement that all of the terms of the original contract still apply. The procurement officer should ensure that it is only a name change and not an assignment.

## 12 CONTRACTOR PERFORMANCE MANAGEMENT

### 12.1 Introduction

A contract is awarded with the expectation that both the contractor and the State have entered into the agreement in good faith, and that both parties will perform their respective duties and obligations in accordance with the contract specifications, terms and conditions and at the quoted price. Occasionally, situations arise when the contractor does not perform and the agency may suffer damages as a result. Typical nonperformance issues include:

- Missing a scheduled delivery date and time
- Providing items that are not a part of the contract
- Providing inferior merchandise
- Unauthorized substitutions
- Alteration of the contract pricing
- Damaged shipments
- Unauthorized use of subcontractors
- Unauthorized assignment of the contract to another contractor
- Inadequate staffing levels
- Unqualified workers
- Late or failed delivery
- Late worker arrivals or no-shows

The State has several remedies available to resolve non-performance issues with the contractor. The agency should refer to the contract terms and conditions to view these remedies. The agency, however, may not usually exercise these remedies until/unless the contractor has been provided with an opportunity to cure the deficiency. When a default occurs, the agency should first review the contract to confirm that the issue is a part of the contract. If the issue is not covered by the contract, the State cannot expect the contractor to perform outside the agreement. If the issue is a part of the contract, the agency must then contact the contractor, discuss the reasons surrounding the default and establish a date when the contractor will resolve the non-performance issue. If the agency's efforts fail to resolve the issue, the agency should one or more of the following options.

### 12.2 Vendor Performance Report

As indicated above, the agency should contact the vendor and attempt to resolve the issue prior to filling a Vendor Performance Report. These initial efforts will generally result in improved relations between the vendor and the agency.

If the contract is a statewide mandatory contract, complete the Vendor Performance Report and submit it to the State Procurement Office procurement officer assigned the contract. The procurement officer will review the issue(s) and retain the form in the vendor's file. If the procurement officer sees a pattern building of non-compliance issues with the vendor, the procurement officer will contact the vendor to discuss the situation and attempt to resolve the issue prior to a formal Demand for Assurance (cure notice). If the contractor continues to fail to

meet the requirements of the contract, the State Procurement Office will take a more formal corrective action up to and including cancellation of the contract and possible debarment of the vendor. The Vendor Performance form may also be used to notify the State Procurement Office of positive performance by the vendor, which be noted in the vendor's file.

When evaluating a vendor for a responsible determination, the procurement officer will review the vendor's file and consider all Vendor Performance Reports and Demands for Assurance that have been filed. If the procurement officer determines that the vendor is not responsible, the vendor will be disqualified and the award denied. Thus it is very important for the agency to complete these forms and file them appropriately.

### **12.3 Demand for Assurance**

The Demand for Assurance is used by agencies to formally notify a vendor of non-performance by a contractor under a state contract. The Demand for Assurance should only be used after all attempts to resolve the issue have failed. The State uses all legal remedies to resolve the compliance issues. The Demand for Assurance may be used by the agency in evaluation of the contractor on future bids. If the State determines that past performance of the contractor is unacceptable, the agency may disqualify the contractor and deny future awards. It is, therefore, very important that the agency provide complete and accurate details of the non-performance issue.

Resolutions to complaints vary even though the problem may be the same for several agencies. Factors such as force majeure, agency budgets, quality of product substitution of needed, ambiguity in the contract itself and acceptance of the agency must be considered.

### **12.4 Late Delivery, Wrong Items, Damages, Quantity/Service Problems**

Following are guidelines that are recommended for the commodity-related issues identified in the Vendor Performance Report or Demand for Assurance. Agencies may wish to use these as models for their own contract compliance.

#### First

- Phone vendor regarding complaint
- Work to find an acceptable resolution to both parties
- Once acceptable resolution determined, send letter to vendor indicating such and timeframe for resolution
- Follow up with end user 1–2 days after scheduled resolution date to verify completion
- If resolved, close Vendor Performance Report

#### Second

- Notify vendor of failure to resolve complaint within established timeframe.
- If extension is requested, call the end user to see if one is acceptable. If it is, notify the vendor and warn them that another failure will result in default and cancellation of the contract.
- Send a Demand for Assurance letter to the vendor regarding extension approval, terms for completing the deadline and possible consequences for failure.
- Telephone the end user one to two days after agreed upon completion date.
- If resolved, close the Demand for Assurance.



If vendor still fails to comply

- Send a letter notifying the vendor of default and subsequent cancellation of contract.
- Cancel the purchase order and release the requisition to allow procurement of the item elsewhere.
- Send a letter to the vendor assessing a penalty if applicable.

## **12.5 Non-Performing Vendors**

The following guidelines are recommended for the service-related issues with vendors. Agencies may wish to use these as models for their own contract compliance.

First

- Call end user to verify number of attempted contacts.
- Initiate three attempts to reach vendor through the agency or SPO procurement officer.
- Send certified letter to vendor indicating failure to act in responsive/responsible manner. Indicate the number of unsuccessful attempts made to reach vendor. Notify vendor of completion deadline and indicate the result will be default and subsequent cancellation of the contract if they fail to comply.
- Telephone end user one to two days after deadline to determine vendor's compliance.

Second

- Cancel purchase order/contract. Initiate new procurement procedures.
- Send letter to vendor indicating cancellation of contract, and assessment of penalty if applicable.

## 13 PURCHASING COOPERATIVES

### 13.1 Introduction

A Purchasing Cooperative (“Coop”) is a solicitation or procurement conducted on behalf of two or more public procurement units, combining requirements in order to obtain the benefits of volume purchasing and a reduction in administrative expenses, thereby allowing a group of state agencies with a common interest to pool their buying power in order to negotiate more favorable pricing on goods and services.

The State of Arizona operates a Coop which allows members to capitalize on the cooperative’s combined buying power through contracts created and administered by the State Procurement Office (“SPO”). The three groups involved in this process are SPO, the Coop Members (Purchasers), and Coop Suppliers. Their respective roles are described below.

SPO also evaluates and will potentially utilize national contracts from other Cooperative entities such as NASPO Value Point, U.S. Communities, National IPA, and others to fulfill the needs of the State. This is accomplished by signing participating addendums with awarded vendors when the services and products and the respective pricing and terms and conditions offered are in the best interest of the State. Close scrutiny is needed to ensure that the national cooperative contracts offer better value to the state.

### 13.2 State Procurement Office

SPO creates and manages the contracts that are eligible for Coop usage. These contracts contain Statewide terms and conditions and may also include Coop language which imposes a fee to be paid by the vendor to the State (typically 1% of sales but may be negotiated). The term of the Cooperative Purchasing Agreement is five years, during which time all information is tracked and maintained by SPO.

Contract language requires quarterly submission of all State and Cooperative sales. The Purchasing Cooperative Agreement language can be found within the Special Terms and Conditions of any applicable Contract. The quarterly sales is submitted to SPO via a Quarterly Usage Report. It is requested of all active suppliers at the end of each quarter.

State quarters are as follows:

- Fiscal Year Quarter 1 – July 1<sup>st</sup> - September 30<sup>th</sup>
- Fiscal Year Quarter 2 – October 1<sup>st</sup>- December 31<sup>st</sup>
- Fiscal Year Quarter 3 – January 31<sup>st</sup>- March 31<sup>st</sup>
- Fiscal Year Quarter 4 – April 30<sup>th</sup> - June 30<sup>th</sup>

SPO uses an Access Database for tracking, maintaining and reporting of Coop information. Usage Reports are submitted to the SPO Usage inbox at [usage@azdoa.gov](mailto:usage@azdoa.gov). There is a standard work process in place to record and archive incoming Cooperative Purchasing Agreements. Reports are saved in a shared folder location to be processed. Once processed they are moved to the corresponding fiscal year and quarter folder. SPO coordinates with the General Accounting Office to ensure that fees are collected in accordance with the contract and the reported usage activity.

### 13.3 Cooperative Purchasers

Cooperative purchasers are defined as a Political Subdivision, Non-Profit Educational Institution, Non-Profit Healthcare Institution, and Non-Profit Other. The term of the Cooperative Purchasing Agreement is five years, during that time all information is tracked and maintained using an Access Database. There is no cost to the Cooperative member to join or use the State's Contracts. Cooperative members can use any statewide issued negotiated contracts. The benefits of using the Purchasing Cooperative Agreement is better pricing, higher service levels and resources saved on negotiations. All contracts and negotiated contracts can be found in Procure AZ. There is no login required, but a user account could be created for free through the e-Procurement system. If assistance is needed to make an account you can contact the Help Desk and they can answer any questions regarding the platform. Qualifying organizations are:

- 501(c)(3) – Charity
- 501(c)(4) – Social Welfare Organization
- 501(c)(5) – Labor, agricultural, horticultural organization
- 501(c)(6) – Business leagues, chambers of commerce, real estate boards, boards of trade
- 501(c)(7) – Social Club

### 13.4 Cooperative Suppliers

There are two aspects needed by Vendors & Suppliers to be reported quarterly. First, spend with all State Agencies which is not assessed an administration fee. Second, spend with all Coop entities, which are assessed an administration fee.

Contract language requires quarterly submission of all State and Cooperative sales. This is referred to as the Quarterly Usage Report. Usage Reports are to be submitted to the SPO Usage inbox at [usage@azdoa.gov](mailto:usage@azdoa.gov). The quarterly payment will need to reference the Invoice number (created by the usage report) and the Contract number.

Administration fees are paid to:  
Department of Administration  
Controller's Office  
Attn: "Statewide Contracts Administrative Fee"  
100 N. 15<sup>th</sup> Ave. Suite 202  
Phoenix, AZ 85007

## **14 PROTESTS AND APPEALS**

### **14.1 Protest Initiation**

Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract. Protests shall be filed in writing with the agency chief procurement office, with a copy to the State Procurement Administrator and shall include:

- Name, address and telephone number of interested party
- Signature of interested party or their representative
- Identification of the agency and solicitation or contract number
- Detailed statement of legal and factual grounds of the protest along with copies of relevant documents, and
- Form of relief requested.

If the protest is based on alleged improprieties in the solicitation that were apparent before the bid opening date and time, the protest must be filed before that date and time. Protests of not susceptible determinations or contract awards must be filed within 10 days after the procurement file is available for public viewing. For this reason, timely posting of the procurement file is advantageous to the State.

Interested parties may submit a written request to extend the protest filing period before the expiration of the 10 days and shall set forth good cause as to what specific action or inaction of the purchasing agency that resulted in the interested party not being able to file within that time. If the interested party shows good cause, the procurement officer may consider a protest that is not filed timely. The agency chief procurement officer shall approve or deny the request in writing, state the reasons, and if granting the extension, set the new date for submission for the filing.

When a protest is filed, the procurement officer must notify all offerors that a protest has been received.

### **14.2 Stays**

Stays of procurements during the protest period can be granted. If the protest is before the due date, before contract award, or before performance of the contract has begun, the procurement officer shall make a written determination to either stay the award or performance or stay all or part of the procurement if there is a reasonable probability the protest will be upheld or if the stay is in the best interest of the state. Copies of the stay determination shall be provided to the interested party, the state procurement administrator and any other interested parties.

Stay decisions shall be issued no later than the time of the issuance of the procurement officers decision. If the procurement officer denies the stay, the interested party may request a stay from the state procurement administrator. This request shall be submitted within 10 days of the notification of the stay denial.

### **14.3 Protest Resolution**

The procurement officer has the ability to resolve a protest. Within 14 days after a protest has been filed, the procurement officer will issue a decision. The decision will contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from the receipt of the

decision. The decision shall be furnished to the interested party by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and copied to the state procurement administrator and the director.

The procurement officer may ask for an extension of the 14-day decision period. The director can approve or deny the request in writing, state the reasons for the determination, and if granting the extension set a new date for submission of the decision not to exceed an additional 30 days (44 days maximum). The director's decision shall be provided to the procurement officer, the interested party, and the state procurement administrator. If the procurement officer's decision is not issued within these time limits, the interested party can proceed as if the protest had been denied.

If the procurement officer sustains the protest in whole or in part, the procurement officer shall implement the appropriate remedy. In determining the appropriate remedy, the procurement officer shall consider the circumstances, the seriousness of the procurement deficiency, degree of prejudice to other parties, the integrity of the procurement system, the good faith of the parties, the extent of performance, the cost to the state, the urgency of the procurement, the impact to the agency's mission and other relevant issues. Any of the appropriate remedies may be implemented

- Decline to exercise the option to renew
- Terminate the contract
- Amend the solicitation
- Issue a new solicitation
- Award a contract consistent with procurement statutes and regulations, or
- Render such other relief as determined to be necessary to ensure compliance with the code and rules.

## 14.4 Appeal

Interested parties may appeal the procurement officer's decision to the Director no later than 30 days after the decision has been received or deemed to be received. The interested party shall file a copy of the appeal with the director, the procurement officer and the state procurement administrator. The appeal shall include the information required in the protest, a copy of the procurement officer's decision, and the precise factual or legal error in the decision. The Director can consider an untimely appeal if the interested party shows good cause or the director finds there is good cause.

The procurement office must give prompt notice of the appeal to all offerors. Upon request, the Director shall furnish copies of the appeal to all offerors. If a stay was issued during the protest period, that stay continues automatically unless the director makes a written determination that the award of the contract or to proceed with contract performance is necessary to protect the substantial interests of the state. If no stay was issued, the Director can issue a stay if, after review of the material, there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.

The procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 21 days after the appeal is filed, at the same time providing a copy to the interested party. Copies shall also be provided to any interested party who requests one at their cost. The agency report shall include the appeal, the offer submitted by the interested party, the offer of the firm(s) being considered for award, the solicitation, including information relevant to the appeal, abstract of the offers or the relevant portions, other documents relevant to the protest and a statement by the procurement officer setting forth the findings, actions, recommendations and any evidently or information necessary to determining the validity of the appeal.

The procurement officer may request an extension of the agency report filing time, identifying the reasons for the extension. The director shall approve or deny the request in writing, stating the reasons for the determination and if granting the extension, the new due date. The director shall notify the procurement officer, the state Procurement administrator, the interested party in writing.

The interested party shall file comments on the agency report within 10 days of the receipt of the agency report. The interested party may provide copies of the comments to the procurement officer, the state procurement administrator and other interested parties. The interested parties can request an extension of the time for filing comments in writing identifying the reasons for the extension. The director can approve or deny the extension, and if approving set for the new filing date. The director will provide a copy of the extension decision to the procurement officer, state procurement administrator and other interested parties.

The Director can sustain the appeal, in whole or in part, the remedies are as listed in R2-7-A904 or hold an informal settlement conference with all interested parties. The conference can be held at any time prior to the administrative decision. If a conference is held, a person with authority to act on behalf of the interested party must be present.

Parties shall be notified in writing and shall be notified that statements, either written or oral, any documentation created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing. If any interested party chooses not to participate, the director can still hold the conference with those interested parties who choose to attend, reschedule or terminate. If the conference results in a settlement between all interested parties, the agreement shall be reduced to writing, signed and entered as the final administrative decision. If agreement is not reached on all matters, but reach a partial agreement, the partial agreement is reduced to writing, signed, and binds the parties through the remainder of the process.

If the Director participates in the conference, he may not participate or attempt to influence the final administrative decision. He may appoint a designee to hold the conference. The Director shall not give any weight to whether or not a conference was held, or any consideration to the perceived success or failure of a conference that was conducted.

The director may dismiss the appeal upon written determination, in whole or in part, if the appeal does not state a valid basis for the protest, if the appeal is untimely, or if the appeal attempts to raise issues not raised in the protest. All parties will be notified in writing of a determination to dismiss an appeal before hearing.

If the director does not dismiss an appeal, an administrative hearing shall be scheduled in compliance with 41-1092.07.

## **15 BEST PRACTICES**

This Chapter highlights practices that experience has shown will make procurement easier to manage, help ensure that the appropriate goods/services are obtained, increase the ability to receive control agency approval, and minimize the likelihood of a bid protest.

### **15.1 Knowing the Business Needs**

Know what the “end result” needs to be. Before starting the procurement process, have a good understanding of what the agency needs, what a product will be used for, whether there will be a need for modifications to existing equipment or facilities, and what is available in the marketplace. Identification of the business needs may require meeting with end-users to bring added clarity to the scope of the transaction and the various components of the transaction, such as the intended product usage, what services are needed, or site conditions.

### **15.2 Proper Planning**

Proper planning is the single most important factor in conducting a successful procurement. Proper planning includes allowing adequate time for advertisement, writing a clear and concise solicitation, allowing sufficient time for potential bidders to ask questions and prepare bids/proposals (taking into account the complexity of the solicitation), reviewing the bids/proposals, and conducting internal/external reviews of the final contract.

### **15.3 Thorough Information Gathering**

Consider using a Request for Information (RFI), as discussed in Chapter VI, to gather information about the types of goods/services that are available. Certain types of products evolve rapidly; therefore, sending an RFI to vendors may provide insight on newer, more efficient products or services that better address the needs of the agency. It is also strongly recommended that an RFI be advertised to provide additional vendors with an opportunity to respond to the RFI.

### **15.4 Conducting Pre-Bid Conferences**

Pre-bid conferences can be very helpful to both agency staff and prospective bidders, particularly with respect to complex procurements. A pre-bid conference provides the prospective bidders and agency staff an opportunity to ask questions and obtain a better understanding of what is needed and what might be offered. Participation by potential bidders in a pre-bid conference can be deemed mandatory or optional. The conference can be conducted via conference call, in-person, or as a combination of both. If a pre-bid conference is held, the agency must document who attended, the questions raised, the location, time, and other salient information. Questions and answers must be provided to all potential bidders after the conference is conducted. Questions should remain “vendor neutral”—that is, the identity of the vendor asking the questions should not be revealed in the presentation of either the question or the answer.

### **15.5 Providing for Site Visits**

Site visits can be very beneficial for both potential bidders and agency staff. These can be deemed mandatory or optional. For example, a site visit may be useful in a procurement for janitorial

services so potential bidders can know exactly what the equipment and/or facility looks like, whether there is access for vehicles, what the security procedures are, and other factors. Consideration may also be given to visiting the bidders' sites to ensure that they have the necessary equipment and/or facilities to meet the contract requirements.

## 15.6 Discussion with Agency CPO or the State Procurement Office

Prior to issuing the IFB/RFP, consideration should be given to discussing complicated and/or sensitive solicitations or unique evaluation methodologies with the agency chief procurement officer or the state procurement office to ensure the procurement is undertaken in an appropriate manner.

## 15.7 Use of F.O.B. Destination

When buying goods, the recommended practice is to require that quotes or bids be based on "Free on Board (F.O.B.) Destination", meaning that there is no additional delivery charge and the title (ownership) does not transfer until the product reaches its destination. This requirement ensures that bids can be evaluated in an equal manner. Further, it ensured that the agency does not assume risk of loss until the product is delivered to the agency and any problems during transport are the vendor's responsibility. By contrast, title to items purchased "Free on Board (F.O.B.) Origin (a/k/a F.O.B. Shipping Point) transfers upon shipping and the agency is therefore responsible for any risk of loss or problems during transport.

## 15.8 Review of Terms and Conditions Proposed by Vendors

Carefully read all terms and conditions that are proposed by the vendor to ensure that nothing conflicts with the State's Uniform Terms and Conditions. In addition, any terms proposed by the vendor such as limits of liability, indemnification, and warranties, or those that may be detrimental to the State, should be discussed with agency risk management and/or agency counsel.

**NOTE:** Material (important or essential) terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

**NOTE:** When issuing a purchase order on a statewide, mandatory contract, agencies and vendors are not authorized to change the terms and conditions of that contract, unless such changes are more favorable to the State.

## 15.9 Negotiating Effectively

The following are suggestions for negotiating contracts that are most commonly awarded via an RFP, or under a single or sole source theory:

- Prior to negotiating, the agency should identify all known issues and outline its position and acceptable alternatives.
- To the maximum extent possible, negotiations should be conducted at the agency's procurement office. Always allow sufficient time to discuss the issues fully.



- Look for a “win-win.” Often, it is possible for vendors and procurement staff to agree on terms that are beneficial to both parties. Making any necessary concessions incrementally will aid in working towards a “middle ground” that is satisfactory to all.
- Notes should be kept of all negotiation discussions and all revisions should be tracked in writing in the e-Procurement system to ensure that the contract being signed contains all agreed upon terms and conditions.

**CAUTION:** Material terms of a contract awarded pursuant to a competitive bid cannot be negotiated.

## 15.10 Involving Upper Management

Even procurements that are limited in scope or are relatively simple have the potential to become controversial. It is recommended that a manager who both has a broad perspective of the agency’s operations and knows the strategic considerations related to the procurement review the final selection of a contract. Management may: 1) concur with the selection; 2) request a re-evaluation in accordance with the pre-established evaluation methodology; or 3) determine that all offers should be rejected and a new procurement conducted. Management may not, however, direct an award to a specific vendor who is not the low bidder or who has not offered the best value in accordance with the pre-established evaluation methodology.

## 15.11 Documenting

Documentation of all phases of the procurement, including communication with bidders or agency program staff, should be included in the procurement record. Note that contact with lobbyists must also be documented in accordance with the requirements of the procurement lobbying law.

## 15.12 Adapting Standard Formats to the Specific Procurement

In general, previously issued solicitation and/or solicitation templates can be very helpful when creating a solicitation document for a new procurement. However, it is important to recognize that such models must often be adapted to suit the particular circumstances. Be aware that changes in law may have occurred since the example was created, which in turn may alter the provisions that must be included. Some amount of tailoring is typically necessary to construct an appropriate and effective solicitation package.

Sample outlines for developing an IFB and an RFP are included in these Guidelines. Consistent with the point made above, depending on the scope and nature of the specific procurement project, not all of the sections and clauses in these samples may apply. Similarly, the scope and nature of the procurement may require sections and clauses that are not listed in the respective samples.

Please note all solicitations require the most current Uniform Instructions and Uniform Terms and Conditions. Always remember to retrieve the most recent version from the SPO website each time you begin a solicitation.

For additional guidance in adapting a template or a previously used format to suit the procurement situation at hand, it is advisable to refer to the agency's policy and procedures and consult with experienced procurement personnel.

### **15.13 Insurance Requirements**

Solicitations and contract should require bidders/contractors to obtain insurance on behalf of the State of Arizona as a condition of doing business with the State. This insurance is in addition to the requirements for the provision of Workers' Compensation and Disability insurance. In an effort to standardize insurance requirement among State entities, the State Risk Management office provides model insurance requirements and guidance for a variety of service contracts.